TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. ~~347.~~ 69

LEOPOLD LACOMBE, FRANK M. HALL AND SAMUEL STAFFORD, COMMISSIONERS OF THE MECHANICS' AND TRADERS' BANK IN LIQUIDATION, APPELLANTS,

vs.

EDMOND J. FORSTALL'S SONS, AS AGENTS OF BARING BROS. & CO., MRS. CAROLINE BERAULT, WIDOW, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED OCTOBER 6, 1884.

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a UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

MECHANICS' AND TRADERS' BANK, in Liquidation,
v.
E. J. FORSTALL'S SONS, Agents Baring Bros. & Co. } No. 9977.

W. S. Parkerson, Esq., solicitor for complainants, appellants; Henry Denis, Esq., solicitor for defendants, appellees.

Transcript of appeal, returnable to the Supreme Court of the United States, at Washington, D. C., on the second Monday of October, A. D. 1884.

1 *Bill of Complaint. Filed May 11th*, 1882.

UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

"MECHANICS' AND TRADERS' BANK," in Liquidation,
versus
E. J. FORSTALL'S SONS, Agents Baring Bros. & Co. } No. 9977.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana:

Leopold La Combe, Frank M. Hall, and Samuel Stafford, all citizens of this State of Louisiana and duly appointed by the late fifth district court for the parish of Orleans and qualified as commissioners of liquidation to liquidate, settle, and wind up the affairs and business of the "Mechanics' and Traders'" Bank, a body corporate and duly incorporated under and by virtue of the laws of the State of Louisiana, and especially the laws governing free banks, and heretofore declared insolvent by judgment of said fifth
2 district court and its charter forfeited and the said bank put in liquidation, as in case of insolvency, bring this their bill of complaint against Edward J. Forstall's sons as agents of Baring Bros. & Co., the said Forstall's Sons being a commercial firm domiciled and doing business in this city of New Orleans, composed of Oscar J. Forstall and Ernest L. Forstall, both residents of this city, and the said Baring Bros. & Co. being a commercial firm domiciled and doing business in the city of London, England, composed of —— Baring — —— ——, whose Christian names are to complainants unknown.

And thereupon your orators complain and say that the said "Mechanics' and Traders'" Bank did, on or about the 11th day of March, 1876, through its president, one Hypolith Gally, deposit with said Edward J. Forstall's sons, as agents of Baring Bros. & Co., as collateral security to secure the claim of Baring Bros. & Co. against said bank, the following-described property, viz:

1st. Two hundred and eighty (280) consolidated bonds of the city of New Orleans of one thousand dollars each of the following serial numbers: 79 New Orleans city consolidated bonds of $1.000.00 each, Nos. 2435, 2436, 2875–2877, 2881–2884, 2887, 2708–2718, 2861–2868, 2869–2870, 5120–5138, 5643–5657, 4547–4549, 4160, 4190, 4593, 130–137.

150 New Orleans consolidated bonds of $1,000.00 each, Nos. 3101–3194, 2215–2239, 5089–5119.

48 New Orleans consolidated city bonds of $1,000.00 each, Nos. 3963–3965, 3952–3957, 3876–3877, 3860, 3476, 3443–3448, 3886–3900, 5197–5202, 5224–5227, G 87, J 436, A 1171, 5947.

3 New Orleans *city* consolidated city bonds of $1,000.00 each, Nos. 24, 25, 26—

Making a total of two hundred and eighty thousand ($280,000.00) dollars.

2nd. 2 Louisiana State 7% consolidated bonds of one thousand dollars each, Nos. 7145, 7146.

4 Louisiana State 7% consolidated bonds of one hundred dollers each, Nos. 2856, 2878, 2879, 2880—

Making a total of two thousand four hundred dollars.

3d. (27) twenty-seven series, each for two thousand dollars, of premium bonds of the city of New Orleans, bearing date July 1, 1875, of the following serial numbers: Nos 5534 to 5559 and 5560—

Making a total of fifty-four thousand dollars.

Making a grand total of bonds deposited by complainants with said Edward J. Forstall's sons, agents of Baring Bros. & Co., of three hundred and thirty-six thousand four hundred ($336,400.00) dollars.

That thereafter, on or about the 19th day of March, 1879, the said "Mechanics' & Traders'" Bank was declared to be insolvent, its charter forfeited, and the assets thereof put into the hands of your orators to liquidate, settle, and wind up its affairs; that among such assets were the bonds hereinabove described in the possession of and held by Edward J. Forstall's Sons as agents of Baring Bros. & Co.

That shortly after said bank was declared to be insolvent, say, on or about the 22nd day of May, 1879, the said E. J. Forstall's Sons, as agents of Baring Bros. & Co., did fraudulently pretend to sell said bonds and did thereby attempt to deprive your orators of a large portion of the assets of said bank, to the great wrong and detriment of the creditors and depositers of said bank.

Your orators further allege and say that the said pretended sale was made through the instrumentality of Raynes & Villeré and Isidore Newman & Bro., brokers, for and on account of Edmund J. Forstall's Sons, as agents of Baring Bros. & Co.

That it was made at a late hour of the day, at private sale, without notice to petitioners.

That they, the said bonds, were sold in a "lump;" that said Raynes & Villeré represented said Forstall's Sons, as agents of Baring Bros. & Co., as sellers, and that said Isidore Newman & Bro. represented said Forstall's Sons, as agents of Baring Bros. & Co., as purchasers.

Your orators further complain and say that said bonds were not sold in accordance with the usage well known in this city in such cases nor according to the terms of the contract of pledge; that the sale was made contrary to law, equity, and justice, and in derogation of the rights of your orators and of the creditors and depositers of said bank.

Your orators further aver that on the day following said pretended sale your orators did, through their chairman, L. La Combe, formally protest against said sale; that thereafter, on or about the 3rd day of March, 1880, their rights to sue for said bonds and any damage that might arise from said illegal sale was expressly reserved in an agreement and settlement with said Edmund J. Forstall's Sons as agents of Baring Bros. & Co.; and on the 3rd day of March, 1880, their rights so to sue was expressly reserved by a judgment rendered by the Honorable W. H. Rogers, judge of the late
7 fifth district court, in the suit entitled "State *ex rel.* Wogan *vs.* Mechanics' & Traders' Bank," herein specially referred to.

Your orators further aver that the said bonds are now worth fully three hundred and thirty-six thousand four hundred dollars, and that after paying the claim of Baring Bros. & Co. there would be a balance of more than two hundred thousand dollars—a sum more than sufficient to pay all the creditors and depositors of said bank.

Complainants further says that this said sale of said bonds, made on or about the 22nd day of May, 1879, was fraudulent, and is and should be declared to be a nullity, and that said Forstall's Sons, as agents of Baring Bros. & Co., should be ordered to return the said bonds, together with all the coupons thereunto belonging at the time of deposit, to your orators in order that they may pa*ll* all the creditors and depositors of said bank, and in default of said return of said bonds they should be decreed to pay your orators the full value thereof

8 To the end, therefore, that the defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths and according to the best and utmost of their several and respective knowledge, remembrance, *and* information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set forth—that is to say—

No. 1. Whether or not the bonds hereinbefore mentioned were deposited by the Mechanics' & Traders' Bank with them, as agents of Baring Bros. & Co., as collateral security to secure the claims of Baring Bros. & Co. against said bank.

No. 2. Whether they so held them at the time of the failure of said bank.

No. 3. Whether they sold them on the 22nd day of May, 1879.

No. 4. Whether Raynes & Villere represented them as sellers and Isidore Newman & Bro. represented them as purchasers.

9 No. 4. At what price did you sell the said bonds? Was that the market price at the time?

No. 5. Have you had those bonds in your possession since the 22nd day of May, 1879?

No. 6. Do you now know where the said bonds are, and do you still hold them as the agents of Baring Bros. & Co.?

Your orators pray that the said pretended sale of the said bonds may be decreed to be absolutely null & void, and that your orators, as commissioners of the "Mechanics' & Traders'" Bank, in liquidation, may be decreed to be the owners of the bonds hereinbefore mentioned and described; and that the defendants herein, Edmund J. Forstall's Sons, as agents of Baring Bros. & Co., be ordered to return to your orators, in their said capacity, the two hundred and eighty (28) consolidated bonds of the city of New Orleans, six (6) Louisiana State 7% bonds, and twenty-seven (27) premium bonds of the city of New Orleans, all hereinbefore fully numbered
10 and described; and in default thereof that the said Edmund J. Forstall's Sons, as agents of Baring Bros. & Co., be decreed to pay to your orators the full value thereof, say about three hundred and thirty-six thousand four hundred dollars ($336,400.00), subject to the claim of said Baring Bros. & Co. against said bank of, say, about one hundred and twenty thousand ($120,000.00) dollars, and that your orators may have such further and other relief in the premises as the nature of their case may require and to your honors shall seem fit.

May it please your honors to grant unto your orators the most gracious writ of subpœna of the United States of America, to be directed to the said Edmund J. Forstall's Sons, as agents of Baring Bros. & Co., thereby commanding them, at a certain day and under a certain pain therein to be specified, personally to be and appear before your honors in this honorable court, and then and there to answer all and singular the premises, and to stand to and
11 perform and abide such orders and decree therein as to your honors shall seem meet and agreeable to equity and good conscience, and your orators shall ever pray.

(Signed) W. S. PARKERSON,
Solicitor for Complainants.

The said complainants, L. La Combe, Frank M. Hall, and Samuel Stafford, personally came and appeared before me, the undersigned authority, and, after being duly sworn, deposeth & say that all the averments of the above bill are true, and this they verily believe.

(Signed) L. LA COMBE.
" FRANK M. HALL.
" SAM. STAFFORD.

Sworn to and subscribed before me this 11th day of May, 1882, — New Orleans, La.

[SEAL.] (Signed) N. B. FRIST,
Not. Pub.

Subpœna in Chancery. Issued May 11th, 1882.

UNITED STATES OF AMERICA:

The President of the United States to the marshal for the eastern district of Louisiana, Greeting:

12 You are hereby commanded to summon Edmund J. Forstall's Sons, as agents of Baring Bros. and Company, to appear before the honorable the judges of the fifth judicial circuit of the United States of America, at a circuit court to be holden on the first Monday of June, 1882, then and there to answer a bill in chancery filed against them, wherein The Mechanics' and Traders' Bank, in liquidation, is complainant and said Edmund J. Forstall's Sons, as agents, &c., are defendants.

Herein fail not, and have you then and there this writ with your endorsement thereon how you have executed the same.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, this 11th day of May, in the year of our Lord one thousand eight hundred
13 and eighty-two, and the 106th year of American Independence.

[SEAL.] (Signed) T. V. COUPLAND,
D'y Clerk.

The defendants are hereby notified that they are required to enter their appearance in the clerk's office of the United States circuit court on or before the first Monday of June, 1882; otherwise the bill may be taken *pro confesso.*

(Signed) T. V. COUPLAND, *D'y Clerk.*

Marshal's Return.

Received May 12, 1882, by the U. S. marshal, and on May 12, 1882, I served a true copy of the within subpœna in chancery on Edmund J. Forstall's Sons, as agents of Baring Bros. & Company, by handing the same to Oscar J. Forstall in person in the city of New Orleans, a member of the aforesaid firm.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Appearance

Extract from chancery order book, June rules, 1882.

MECHANICS' & TRADERS' BANK, in Liquidation,
versus
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

MONDAY, *June 5th*, 1882.

14 The defendants herein, by Henry Denis, their solicitor, have this day entered their appearance to the complainant's bill of complaint.

Answer & 10 Exhibits, 1 to 10. Filed July 28th, 1882,

United States Circuit Court, Eastern District of Louisiana.

THE MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, as Agents of Baring Bros. & Co. } No. 9977.

Answer.

The joint and several answer of Oscar J. Forstall and Ernest L. Forstall, composing the commercial firm of Edm. J. Forstall's Sons, as agents of Baring Bros. & Co., of London, defendants, to the bill of complaint of Leopold La Combe, Frank M. Hall, and Samuel Stafford, commissioners of Liquidation of the Mechanics' and Traders' Bank, complainants.

These defendants, Oscar J. Forstall & Ernest L. Forstall, composing the firm of Edmund J. Forstall's Sons, as agents of the
15 firm of Baring Brothers & Co., which firm is composed of Russell Sturgis, Edward Charles Baring, James Stewart, Hodgson, Henry Bingham Mildnay, Charles Loyd Norman, and Thomas Charles Baring, all of whom are aliens and subjects of the Queen of Great Britain and Ireland and reside in England and carry on business as copartners at the city of London, in England, under the firm name of Baring Brothers & Co., appearing herein for and on behalf of their said principals, and filing this as the answer of Baring Brothers & Co., through them as such agents, now and at all times hereafter saving to themselves and their said principals all and all manner of benefit or advantage of exception or otherwise that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, answering, say that these defendants specially deny that the said Baring Brothers & Co., or the said Edmund J. Forstall's Sons, agents as afore-
16 said, fraudulently sold or pretended to sell the bonds mentioned and described in the bill of complaint of the complainants, and deny that they or either of them thereby deprived or attempted to deprive the complainants of any portion of the assets of the Mechanics' & Traders' Bank, to the wrong and injury of the creditors of said bank, as averred by the complainants.

That these defendants specially deny the allegations of the said bill of complaint to the effect that the said bonds were not sold in accordance with the usages well known in this city in such cases or according to the terms of the contract of pledge, and that the said sale was made contrary to law, equity, and justice, and in derogation of the rights of the complainants and of the creditors & depositors of the said bank, and that the said sale was fraudulent and should be declared to be a nullity, and that said Forstall's Sons, as agents of Baring Brothers & Co., should be ordered to return the said bonds, with the coupons thereto belonging, at the time of
17 the deposit, to the complainants, or in default of such return to

pay to the complainants the full value thereof; and these defendants especially deny each & every of the said allegations and every part of the same.

And now, further answering, these defendants say that by act under private signature, made in duplicate, in the city of New Orleans, on the 11th day of March, 1876, it was agreed between Baring Brothers & Co. and Edmund J. Forstall's Sons, their agents and representatives, and the Mechanics' & Traders' Bank of New Orleans that whereas the said Baring Brothers & Co., of London, continued in favor of the said bank an open credit of forty thousand pounds sterling theretofore granted to it by them, the said bank, in order to secure the full and punctual payment of such amount as might be or become due on account of said credit, thereby pledged to the said Baring Bros. & Co. and placed in the hands of the said E. J. Forstall's Sons, in New Orleans, as the representatives of the pledgees, certain bonds, promissory notes, and other securities described in said act of pledge; that it was expressly agreed
18 between the parties to the said act of pledge as follows, to wit:

"That in the event of the non-payment of the amount due as above stated, Edm. J. Forstall's Sons are hereby authorized, as agents of Messrs. Baring Bros. & Co., and of the bank to cause said pledged property to be disposed of for cash, at public or private sale, at the option of said Edm. J. Forstall's Sons, and the proceeds of said sale shall be applied to the payment of the amount due as aforesaid, with interest accrued thereon, and all commissioner's costs and charges attending said sale, the obligation of the bank for any balance that may be left uncovered by the proceeds of said sale remaining in full force."

That a copy of said act of pledge, marked as Exhibit No. 1, is hereto annexed for reference and made part of this answer.

That the two hundred & eighty thousand dollars of consolidated bonds of the city of New Orleans and two thousand
19 four hundred dollars of Louisiana State bonds in the complainants' bill of complaint mentioned are the same as are mentioned and included in the said act of pledge, and the fifty-four thousand dollars of premium bonds of the city of New Orleans mentioned in the complainants' bill of complaint were the substitutes for certain other bonds mentioned in the said act of pledge, and were so substituted before the failure of said bank, to be held under the said pledge & for the same uses and purposes, & are all subject to the like terms & conditions and with the like rights & powers to the said Baring Bros. & Co. and Edmund J. Forstall's Sons, their agents & representatives, as expressed in the said act of pledge in relation to the securities originally embraced therein.

That on the 19th day of March, 1879, when the said Mechanics' & Traders' Bank was decreed insolvent, its charter forfeited,
20 and commissioners appointed to liquidate its affairs, as averred by the complainants, the said bank was justly & truly indebted unto Baring Brothers & Co. for money by them lent & advanced to & for said bank under the terms of the aforesaid open credit and secured by said act of pledge in the full sum of $227,267.09,

two hundred and twenty-seven thousand two hundred & sixty-seven dollars and nine cents; that Baring Bros. & Co., by said Edm. J. Forstall's Sons as their agents, shortly after the said commissioners were appointed & qualified, and before the sale of said bonds in May, 1879, herein mentioned, rendered to the said commissioners, the complainants herein, the account current of Baring Bros. & Co. with the said bank for the indebtedness secured by said pledge, and demanded payment of the balance due to Baring Bros. & Co. for which such pledge was held, and were wholly refused such payment, & the said commissioners then & thereafter neglected and refused to pay the said indebtedness.

21 That these defendants held at that time, under the stipulations of the said act of pledge and among the securities placed in their hands by the said bank, the consolidated bonds of the city of New Orleans, bonds of the State of Louisiana, and premium bonds mentioned and described in the bill of complaint of the complainants; and these defendants deny that said bonds or any of them formed part of the assets of said bank at the time of its failure or of the appointment of the complainants as commissioners of liquidation in any other sense than that the said bank held a technical or nominal residuary interest therein as pledgors, subject to the said pledge, which residuary interest was of no substantial value, for that the value of the whole of the securities and assets held under the said pledge was much less than the indebtedness of the bank to Baring Bros. & Co. as security for which the same were held in pledge.

22 That on the 22nd day of May, 1879, the aforesaid E. J. Forstall's Sons, acting by virtue and under the authority of the said act of pledge, caused the said consolidated bonds of the city of New Orleans, bonds of the State of Louisiana, and premium bonds, pledged to these defendants as aforesaid, to be sold at the stock exchange in this city of New Orleans; that said sale was made publicly at the regular sale hour, and under the rules and usages of the said stock exchange, and for the full and highest market value of the said securities, and that in every respect the said sale was regular, fair, and honest, and is good and valid and should be so declared.

That in the interest of the complainants themselves, in a spirit of justness and fairness, and for the purpose of ascertaining the real market value of said securities, and in order not to sell them below their full market value, the said E. J. Forstall's Sons, acting in so doing, as well as the agents of the said pledgors, the Mechanics' & Traders' Bank, by the express terms of the act of pledge, as

23 the agents and representatives of Baring Brothers & Co., employed Messrs. Reynes & Villere, well known and honorable stock brokers of this city, and instructed them to sell the said securities at the stock exchange, but only for their full value, and for the purpose of promoting competition among the bidders at the sale the said E. J. Forstall's Sons, as agents of Baring Bros. & Co., directed the said brokers to offer privately to whomever would bid upon said securities to buy them back from such bidders at an ad-

vance price of one-eighth per cent; that at said sale a small lot of said securities was first put up and bid for, and only after thus ascertaining the real market value thereof were all the said bonds adjudicated and sold to Messrs. I. Newman & Bro., also well known and honorable brokers of this city, for the prices set forth in the detailed statement, marked Exhibit No. 2., which is hereto annexed for reference and made part hereof; that accordingly the said E. J. Forstall's Sons, as agents of Baring Brothers & Co., afterwards purchased from the said I. Newman & Bro. all the said bonds, but the said E. J. Forstall's Sons and these defendants, Baring Bros. & Co., pursued the course which they did pursue, as aforesaid, in respect of such sale of said bonds, honestly and fairly and in view of
24 protecting the interests of all parties concerned, because those bonds would have been sacrificed and sold for much less than they did if they had been thrown into the market without the precautions thus taken by E. J. Forstall's Sons to obtain their full value; that there was a special occasion for making sale of the bonds under the pledge, in order that the proceeds might be carried to credit of the account and a balance struck, on which these defendants might claim their *pro rata* dividend from the general assets of the insolvent bank, and said transaction of sale & repurchase was not entered into with any view to speculation or to any probable profit at the expense of the bank or its representatives by means of any anticipated future advance in the value or price of the bonds.

That thereafter these defendants sold the said bonds at the times and for the prices and in the manner set forth in detail in the statement marked Exhibit No. 3, hereto annexed for reference and made part hereof.

25 And now, further answering, these defendants say that it is not true, as averred by the complainants, that in an agreement & settlement with said Edmund J. Forstall's —, as agents of Baring Brothers & Co., on or about the third day of March, 1880, and by a judgment rendered by the Hon. W. H. Rogers, judge of the late fifth district court for the parish of Orleans, in the suit entitled State *ex rel.* Wogan *vs.* Mechanics' & Traders' Bank, on the 3rd day of March, 1880, the right of the complainants to sue for the said bonds, and any damage that might arise from said (alleged) illegal sale was expressly reserved; but, on the contrary, these defendants say that the agreement of compromise and settlement between the complainants and said Edmund J. Forstall's Sons, as agents of Baring Brothers & Co., in respect of the account between Baring Brothers & Co. and the said bank in liquidation and the complainants as commissioners, was made and entered into on the 23d February, 1880, and contained no reservation whatever
26 of any right to the said bank in liquidation or the complainants to question the sale of the said bonds which had been made as aforesaid in May, 1879, or to sue for or claim return of said bonds, or to claim any damages for or on account of such sale, or to claim from Baring Brothers & Co. or Edmund J. Forstall's Sons, agents as aforesaid, any further or other accounting for or in respect of said bonds than the credit for the net proceeds thereof at the

price of the said sale of May, 1879, which had been made and given in the account which was liquidated, adjusted, and admitted by the said agreement of February 23, 1880, as by that agreement, which was duly made & executed under private signature on said 23d February, 1880, and a copy whereof is hereunto annexed, marked Exhibit No. 10, and made part of this answer, will more fully appear, and that the only reservation of any right to the said complainants in respect of such bonds which was either made or purports to have been made by the said judgment of March 3rd,
27 1880, was not of any right to sue for a claim return of said bonds, but merely the reservation of whatever rights the bank in liquidation might then have for any damages resulting from the sale of the bonds of the bank in pledge, the provisions of said decree in respect of such reservation being in the words following, viz:

"It is further ordered, adjudged, and decreed that all the rights of both the opponents and the bank in liquidation touching the value of 180 missing coupons and any damages resulting from the sale of the bonds of the bank in pledge by said opponents are expressly reserved."

And these defendants insist and say that in the said agreement of February 23d, 1880, which had been made prior to the said judgment, the plaintiffs, as the representatives of the said bank, had already precluded themselves from questioning the sale theretofore made of said bonds in May, 1879. as aforesaid, or sueing for or claiming the returns of said bonds, and from claiming any
28 further or other credit or accounting for or in respect of the said bonds than the credit therefor to the account of said bank at the price of said sale of May, 1879.

And these defendants expressly say that the account referred to in the said agreement of February 23, 1880, and all the items whereof, except those therein particularly in that behalf specified, were by said agreement admitted was the account between Baring Brothers & Co. and the said bank in liquidation rendered by Baring Brothers & Co. through Edmund J. Forstall's Sons, as their agents, to said complainants, as commissioners in liquidation, in and by which account all the said bonds in the bill of complaint herein mentioned were accounted for to said bank in liquidation as having been fully sold and disposed of by crediting to it the net proceeds of such sale made in May, 1879, as the basis of that sale, and that in the compromise and settlement thus made and in the subsequent action as the basis thereof the complainants received and
29 took the benefit of this credit for the proceeds of such sale, in the reduction of so much of the amount of the remaining indebtedness of the bank to Baring Brothers & Co., upon which Baring Brothers & Co. were entitled to and did receive from the complainants their *pro rata* dividend out of the proceeds of the general assets of the bank in the hands of the commissioners; and the complainants, by the said agreement of settlement & compromise of February 23, 1880, did likewise specifically recognize and confirm the said sale of May, 1879, by agreeing to allow a commis-

sion thereon at a reduced rate instead of the commission originally charged & claimed by these defendants, besides allowing them expenses of such sale.

And these defendants further say that at the time of the said settlement of February 23, 1880, and long before, the said complainhad full notice and knowledge of the facts & circumstances relating to the said sale made in May, 1879, and the repurchase of such bonds immediately thereafter, as hereinbefore admitted and
30 stated, and that said bonds were still held by said E. J. Forstall's Sons, as agents of Baring Brothers & Co., and in an answer filed by the complainants herein on or about November 10, 1879, in the suit brought against them by E. J. Forstall's Sons for certain missing coupons, wich suit is in this answer elsewhere mentioned, the complainants herein had alleged, in respect of the said sale made in May, 1879, of the bonds aforesaid, "that the said bonds were not sold according to the usage well known in this city in such cases, or in accordance with the terms of the contract of pledge or according to the law; that the said bonds were sold without notice to respondents; were all sold at one time, late in the day, below the market prices, and were bought in by the plaintiffs themselves," and had by said answer objected to the items of the account rendered, in which credit was given to the bank in liquidation by Baring Brothers & Co. for the said bonds as having been sold in May, 1879, at the price of said sale.

31 And these defendants further say that when the said pledge was originally made the value of the said two hundred and eighty thousand dollars of New Orleans city consolidated bonds did not exceed at the utmost forty per cent. of the face value thereof, and this was the valuation placed upon the same by the bank itself in the act of pledge, and that the values of the said New Orleans city premium bonds and Louisiana State bonds when the same were originally pledged by the bank to Baring Brothers & Co., as aforesaid, did not exceed thirty per cent. of the face or thereabouts for the premium bonds and seventy per cent. of the face or thereabouts for the Louisiana State bonds; that after such pledge the values of said bonds of the several classes aforesaid still further materially declined, and when the bank failed and the complainants were appointed commissioners in liquidation and from thenceforth continuously until after the time of the actual sale of said bonds in May and June, 1880, as hereinbefore mentioned, it
32 was indisputable and well known to and understood and recognized by the complainants, as commissioners as aforesaid, as well as by Baring Brothers & Co. and Edmund J. Forstall's Sons, as their agents, that the entire value of the securities and assets which were embraced in the said pledge from the bank to Baring Brothers & Co. was much less than the bank's indebtedness to Baring Brothers & Co., for which the same were held in pledge, and that even upon the supposition of disregarding the said sale of May, 1879, and treating the said bonds after that sale and the repurchase aforesaid as still under the pledge, there would have been no possibility of realizing from the said pledged securities and assets

by any possible management or disposition thereof an amount sufficient, or nearly sufficient, to pay the said indebtedness for which they stood pledged, and that the said complainants, as commissioners in liquidation, had no motive for redeeming or attempting to redeem the said bonds from said pledge, and never had nor
33 professed to have any idea or intention of doing so or attempting to do so, nor had they any funds or means for such purposes if such redemption had been desirable; and, moreover, after the said sale made in May, 1879, the market price and value of such bonds still further declined below the prices of that sale, & that, at the respective times of said settlement of February 23, 1880, and of said decree of March 3, 1880, it would not have been to the advantage of the complainants or the bank in liquidation to avoid and cancel said sale of May, 1879, if that privilege had been accorded to them.

And these defendants allege that the aforesaid reservation in said decree of March 3, 1880, in relation to any damages resulting from the sale of the bonds of the bank in pledge by the opponents was of no force or efficacy, for that there were no such damages, & moreover the sale had been previously affirmed & recognized by the complainants, as aforesaid, & all claims for damages therefrom, if any, they waived or relinquished, so that at the time of said decree there was no subsisting claims of the complainants in that
34 regard to which such reservation could be applicable, and these defendants believe the clause of said decree purporting to make such reservation was inserted by inadvertence & mistake, but they say that at all events the said clause does not reserve, nor purport to reserve, to the complainants any right or claim to sue for the said bonds, or to reclaim the same from said E. J. Forstall's Sons, as agents of Baring Brothers & Co., in whose hands as such agents they then were, or to impeach or treat as null the said sale which had been made thereof.

And these defendants say that under the provisions of the law of Louisiana relative to the free banks of this State, act No. 338 of the Legislature of 1853, the said 280 consolidated bonds of the city of New Orleans, the sale of which is attacked in the present suit, had, before they were pledged to these defendants by the Mechanics' & Traders' Bank, been specially assigned by said bank by written endorsement to the auditor of the State of Louisiana, and after-
35 wards reassigned by said auditor to the said bank by special endorsement, which circumstance destroyed or impaired the currency or negotiability of said bonds in the hands of these defendants.

And these defendants further say that after the said settlement of February 23, 1880, and the said decree of March, 1880, for the purpose of fully re-establishing said negotiability in favor of these defendants and enabling them freely and without difficulty to sell and dispose of said bonds as they might see fit, and in pursuance and execution of the compromise and settlement between the complainants and these defendants, the said complainants, on the 19th day of May, 1880, by their counsel, applied for and obtained from the said fifth district court for

the parish of Orleans, under whose jurisdiction said bank was being liquidated, an order authorizing them to endorse the said bonds to bearer; and thereafter, on or about the 20th day of May, 1880, the said complainants did endorse all the said bonds to bearer under the certification and seal of office of A. Abat, a notary public
36 in this city, for the purpose of giving authenticity to their said action, and the complainants did then deliver the said bonds so endorsed by them by authentic act to said Edmund J. Forstall's Sons, as agents of Baring Brothers & Co., to be by them thereafter sold & disposed of at their free will and pleasure, without any further notice to the complainants, and without any further accountability or responsibility of Baring Brothers & Co. or their said agents, to the said complainants or the said bank in liquidation, in respect of the said bonds, and that said bonds thus endorsed to bearer were so delivered over by the complainants & so received by said Forstall's Sons, as agents of Baring Brothers & Co., under & with the full understanding and agreement by and between the said parties that said Forstall's Sons, as agents of Baring Brothers & Co., were and should be at full liberty to and rightfully might, at any time thereafter, sell and dispose of said bonds so endorsed to bearer (as well as the said other bonds which had been originally embraced in the said pledge and included in said sale of May, 1879),
37 when and as said Forstall's Sons, as agents of Baring Brothers & Co., might choose to do, without giving any further notice to the complainants or to said bank in liquidation for or in respect of said bonds or the proceeds thereof, beyond the credit therefor which had been given by Baring Brothers and Co. in the said account rendered and admitted and liquidated as aforesaid, and the complainants then & there waived any and all previously asserted or reserved claims to question or impeach the said previous sale of May, 1879, or to claim any damages by reason thereof.

And these defendants say that therefore and thereafter, in May and June, 1880, the said bonds were duly & regularly sold and disposed of to strangers by said Edmund J. Forstall's Sons, agents of Baring Brothers & Co., in good faith & in and according to the usual and customary course of such business in New Orleans at the dates and for the prices which are stated in the aforesaid Exhibit No. 3, hereto annexed, and that such prices were the full and
38 fair values of said bonds, respectively, at the times of such sale, and the best and utmost prices that could be had or obtained for the same.

And these defendants insist that under the circumstances in this answer stated the said sale made in May, 1879, accompanied by the repurchase aforesaid, was duly, fully, and legally ratified and confirmed by the complainants as being a transaction lawfully divesting the title of the pledgors and vesting the beneficial ownership of the bonds in Baring Brothers & Co. or said Forstall's Sons, as their agents, with the right subsequently to dispose thereof at their pleasure, upon the agreed terms of crediting the bank for said bonds as being sold at the net price of such sale of May, 1879, as entered in the account rendered and liquidated and adjusted as aforesaid, and

that whatsoever right, if any, may have originally existed in favor of the complainants to question or avoid such sale of May,
39 1879, was by the complainants duly & fully waived, relinquished, and released and the said sale affirmed by them; but if it should be held that, notwithstanding the matters herein alleged, any right still existed on the part of the complainants or said bank in liquidation to question or avoid said sale of May, 1879, these defendants insist that such right can have extended no further, at the utmost, than to require from Baring Brothers & Co. or their said agents an accounting or credit or allowance in addition to the credit already given in account, as aforesaid, for such profits, if any, as might actually have accrued to them from their actual sales and dispositions subsequently made of said bonds; but even if it should be held that said sale of May, 1879, was wholly inefficacious and was never legally ratified or affirmed by the complainants, and that, notwithstanding what took place, as aforesaid, the title of the pledgor still remains and the bonds were still held under said pledge, then these defendants allege that the said actual sales
40 of said bonds, made to strangers in May & June, 1880, as aforesaid, were duly and regularly made by Edmund J. Forstall's Sons, agents & representatives of Baring Brothers & Co. (as likewise the duly constituted agents of the pledgors), under and in virtue of the said act of pledge and in execution and due pursuance of and accordance with the right & powers thereby granted to Baring Brothers & Co. and to Edmund J. Forstall's Sons, their agents and representatives as aforesaid; that by or under the terms of the act of pledge notice to the bank or the complainants, as its representatives, of those sales or of the intention to make the same when they were made was not required, or if originally any such notice was or would have been requisite or proper such notice was duly waived by the complainants by their acts and proceedings & assent and agreement in this answer mentioned.

41 And these defendants allege that when the complainants, in May, 1880, endorsed to bearer & delivered to E. J. Forstall's Sons, as agents of Baring Brothers & Co., the said New Orleans city consolidated bonds so endorsed, the complainants well understood that it was the purpose & intention of said Forstall's Sons, as such agents, shortly thereafter to sell and dispose of said bonds, & to do so without any further notice to the complainants or other formality, & that such endorsement was obtained for that end & purpose, & the complainants also then well understood that said Forstall's Sons, as such agents, understood such intended sale by them of such bonds & the other bonds which had been embraced in the said pledge, without further notice to the complainants or other formality, to be an act which would be rightful on their part, & which was and would be acquies-ed in by the complainants as a legitimate and proper disposition of said bonds, after which there would be no further or other liability or accountability on
42 the part of Baring Brothers & Co. or their said agents to the complainants or the said bank in liquidation for or in respect of the said bonds or the proceeds or value thereof beyond the sum

which had been already credited by Baring Brothers & Co. to the bank therefor in account as aforesaid, & that so knowing & understanding such to be the purpose of said Forstall's Sons as agents as aforesaid, and such their understanding as to the effect thereof, the complainants' acquiescence therein, the complainants gave no notice or intimation to said Forstall's Sons of any dissent on their part or any understanding on the part of the complainants to the contrary in any respect of such understanding of said Forstalls, & if at the time the complainants did not in fact have the like understanding or purpose, or if they then considered themselves as having the right to require further notice of the said intended sales, or as having or retaining a right to make claim against Baring Brothers
43 & Co. or their said agents for a return of said bonds, notwithstanding such then proposed sales by said Forstalls as such agents or for the amount of any subsequent advance in the market price or value of said bonds, which might occur after such then proposed sales, the complainants suppressed & concealed from said Forstall's Sons all such views & intentions & intended claims & pretentions of the complainants, & thereby led and induced said Forstall's Sons, agents as aforesaid, to make such sales, which they did actually make in May & June, 1880, without further notice to the complainants or other proceeding or formality for realizing the proceeds of said bonds, and that such suppression & concealment by the complainants, accompanied by their act in endorsing the said bonds to bearer and delivering them over to said Forstall's Sons as aforesaid, was willful & designed on the part of the complainants, & that for the reasons aforesaid the complainants are equitably estopped and precluded from any such claim as they now make
44 in this suit, & from making any claims or demand of accountability for or in respect of said bonds or their proceeds or value beyond the proceeds of such actual sales made in May & June, 1880, if otherwise & irrespective of such circumstances & equitable estoppel, the complainants could legally or equitably make any such claim or demand, which, nevertheless, these defendants in nowise admit but wholly deny, & these defendants, nevertheless, asserting as aforesaid that said bonds were so endorsed to bearer & delivered over to them by the complainants with such express understanding & agreement & by such expressed purpose & with such express right to sell without further notice & without further accountability as hereinbefore alleged.

And these defendants say that if the actual sales made of said bonds in May & June, 1880, had been accompanied or preceded by the most formal notices & demands possible, & by all possible formalities & proceedings as for realizing & selling under the
45 pledge either with or without all delay of time of sale which might have been consequent upon such proceedings & formalities, no surplus of such bonds or their proceeds beyond the unsatisfied balance of the debt for which they had been pledged could possibly have resulted thereby to the complainants or to said bank in liquidation, for that the value & price of all said securities at

that time & for nearly two years afterwards fell short of the said unsatisfied indebtedness to Baring Brothers & Co.

And these defendants say that if Baring Brothers & Co. or E. J. Forstall's Sons, as their agents or representatives, be held subject to accountability for the said bonds in the complaint mentioned or their value upon the footing of the said actual sales thereof made to strangers in May & June, 1880, the amount of such proceeds would have to be credited by Baring Brothers & Co. to the bank in liquidation upon account of the indebtedness which was secured by said pledge, in lieu and stead of the former credit for the price of said sale of May, 1879, and after such new credit and
46 after full accounting and credit by Baring Brothers & Co. for the proceeds of all other securities and for all payments on account and all proper items of credit whatsoever, there would still remain a large balance of the indebtedness of the said bank to Baring Brothers & Co., secured or purporting to be secured by said pledge, still remaining unpaid, unsatisfied, and unsecured.

And for answer to the allegations of the said bill of complaint to the effect that the present full value of said bonds is about three hundred & thirty-six thousand four hundred dollars, and that if said bonds were to be returned to the complainants, as now claimed by them, the return would be subject to a claim of Baring Brothers & Co. for only about one hundred and twenty thousand dollars, *that* defendants deny such allegations, except that they admit that the present value of said bonds is largely in excess of the indebtedness to Baring Brothers & Co., so that if the said bonds were now on hand subject to the pledge and there were to be a re-
47 demption thereof by the complainants on terms of paying balance of the indebtedness for which they were pledged, there would not be a large surplus realizable by the complainants therefrom, but what the present value of said bonds is these defendants cannot accurately determine or state; but they allege that if the credit given for the said bonds, as aforesaid, on the basis of the price of said sale of May, 1879, were to be now annulled, the balances remaining due to Baring Brothers & Co. upon the indebtedness secured by said pledge, including the interest in their favor, would be much more than one hundred & thirty thousand dollars, the true amount of which balance would appear upon an accounting, if there were occasion therefor.

And these defendants allege that the above-mentioned excess of present value over the indebtedness is owing solely to an event which did not occur untill this present year, eighteen hundred and eighty-two, and which was not previously foreseen or expected by
48 any of the parties hereto, and that at no time until such occurrence in this present year, which occurrence greatly raised the price and value of the New Orleans city consolidated bonds, was the price or value of the assets and securities which were embraced in the said pledge equal to the amount of the indebtedness for which they were pledged.

That it is wholly out of the power of the defendants to return the said bonds to the complainants, for that the same have long since

been duly and regularly sold in pursuance of the terms & conditions of the pledge & with the aquiescence & concurrence of all parties concerned, and the present attempt to hold Baring Brothers & Co. responsible for the subsequent advance in the price of the securities so sold, which was occasioned by the long, subsequent, & independent occurrence aforesaid, is wholly unjust and, in its intended effect, fraudulent in nature, and, as these defendants submit, is without legal or equitable foundation.

And these defendants set up as an equitable defence,
49 irrespective of the defences otherwise stated, that the laches and delay of the complainants in setting up their claim to avoid the sale & reclaim the bonds or their present value for so long a time & until after so great and unexpected a change of circumstances, & the tacit, if not express, acquiescence of the complainants, do, under the circumstances of the case, equitably bar & preclude & stop the complainants from disaffirming, impeaching, or avoiding the said sale of May, 1879, or at all events from disaffirming, impeaching, or avoiding the said sales of May & June, 1880, as being conclusive upon them in respect of price or value of the previous sale were not so.

And your respondents further aver that while the said consolidated bonds of the city of New Orleans were held in pledge by these defendants they placed 560 interest coupons thereof in the hands of the said Mechanics' & Traders' Bank for collection, and the same not having been collected or returned to these defendants, suit was brought by these defendants against the complain-
50 ants in the fifth district court for the parish of Orleans, under No. 10002 of the docket, for the said 560 interest coupons; that 380 of the said interest coupons were thereupon voluntarily returned to these defendants by the complainants; that for the 180 remaining coupons which were missing judgment was rendered in favor of these defendants against the complainants; that, in their answer to the said suit, these complainants raised the question of the legality of the said sale of the bonds, which they attack in the present action on the same grounds, and denied the correctness of the account of these defendants with the said bank, of which account the price of said bonds formed part; that the decree rendered in said suit in favor of these defendants is therefore a bar to the present action of the complainants; that duly certified copies of the petition of these defendants in that suit and of the documents thereto attached, together with the answer of these complainants and the judgment therein rendered, marked, respectively, Ex-
51 hibit- Nos. 4, 5, and 6, are hereto annexed for reference and and made part hereof.

And your respondents say further that the complainants having, on the 5th day of February, 1880, presented and filed in the matter of their administration and liquidation of the affairs of said bank in said suit, entitled The State of Louisiana *ex rel.* Wogan *vs.* The Mechanics' & Traders' Bank, in the fifth district court for the parish of Orleans, an account and tableau of distribution among the creditors of said bank, and not having thereon placed these defendants

as creditors, these defendants filed a petition of opposition to the said account and tableau and claimed to be recognized by said court and placed on said tableau as creditors of said bank for the balance of account due them after crediting the said bank with the proceeds of the sale of said bonds, which is attacked by the complainants in the present action; that upon said opposition being filed a compromise and settlement was entered into by the complainants
52 and these defendants by which the final balance due these defendants by said bank, after crediting the latter with the proceeds of said bonds, was fixed and established, and on the 3rd day of Mar., 1880, a final judgment was rendered by said court thereupon accordingly; that the said decree is, therefor-, also a bar to the present action; that duly certified copies of said opposition of these defendants and of said decree are hereto annexed for reference and made part hereof as Exhibits No. 7, 8, and 9.

And these defendants say further that on the 23rd day of February, 1880, by the before-mentioned act, under private signature of that date, made in duplicate, a copy whereof is hereto annexed as Exhibit No. 10 & made part of this answer, the complainants and these defendants, after settling together the various points of difference between them, agreed, among other things, as follows, to wit:

"The only question to be submitted to the court is that
53 of the bank's liability on $5,400 missing coupons on city consolidated bonds," and that this point was finally decided and decreed in the judgment aforesaid, hereto annexed as Exhibit No. 6, in which the complainants were condemned to pay the said amount to these defendants; that the complainants are, therefore, estopped by said agreement & settlement from bringing the present action; that the said act of settlement is hereto annexed for reference and made part hereof as Exhibit No. 10.

And these defendants further say that if any right or claim of the complainants to claim damages against them for or in respect of the sale made of the said bonds in May, 1879, as aforesaid, was reserved to the complainants or ever in anywise existed, such right & claim is prescribed and barred by the lapse of the term of one year from the 22nd day of May, 1879, under & in pursuance of article 3536 of the civil code of Louisiana, and these defendants set up such prescription and lapse of time as a bar against any such alleged claim or course of action if the same could otherwise
54 be entertained in this suit.

And now the said Oscar J. Forstall and Ernest L. Forstall, agents of the said Baring Brothers & Co., defendants, answer separately and under oath the several interrogatories to them in the bill propounded, as follows, to wit:

To No. 1. The bonds mentioned in the bill were deposited by the Mechanics' & Traders' Bank with Edm. J. Forstall's Sons, as agents of Baring Bros. & Co., as collateral security to secure the claim of Baring Bros. & Co. against said bank.

To No. 2. Edm. J. Forstall's Sons so held them at the time of the failure of said bank.

To No. 3. Edm. J. Forstall's Sons did sell them on the 22nd day of May, 1879.

To No. 4. Reynes & Villere re presented Edm. J. Forstall's Sons as sellers. and Isidore Newman & Bro. purchased the bonds with the understanding that Edm. J. Forstall's Sons would purchase them back from said Isidore Newman & Bro. at an advance price of one-eighth per cent.

To No. 4. We sold the said bonds at the prices set forth in
55 detail in Exhibit No. 2, hereto annexed. Those prices were the full market prices of the bonds at the time.

To. No. 5. We had those bonds in our possession since the 22nd day of May, 1879, until the 21st of May, 1880, the 24th of May, 1880, the 25th of May, 1880, and the 3rd of June, 1880, when we sold them, as shown in Exhibit No. 3, hereto annexed.

To No. 6. We do not know where the said bonds are now, and we do not hold them any more as agents of Baring Bros. & Co. or in any way.

(Signed) ERNEST L. FORSTALL.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause, or thing in the said complainants' said bill of complaint contained material or necessary for these defendants to make answer unto and not herein and hereby well & sufficiently answered, confessed, traversed, and avoided or denied, is true to the knowledge or belief of these defendants; all which matters *and* these defendants are ready & willing
56 to aver, maintain, and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs & charge in this behalf most wrongfully sustained.

(Signed) ERNEST L. FORSTALL.
" HENRY DENIS,
Solicitor for Respondents.

On this 27th day of July, 1882, in the city of New Orleans, before me, G. Le Gardeur, notary public, personally appeared Ernest L. Forstall and made oath that he had read the above answer subscribed by him & knows the contents thereof, and that the same is true of his own knowledge, except as of matters which are therein stated to be on his information or belief, and as to those matters he believes them to be true.

(Signed) G. LE GARDEUR, [SEAL.]
Not. Pub.

On this 27th day of July, 1882, sworn to before me, G. Le Gardeur, notary public, in the city of New Orleans, — Ernest L. Forstall, whose name is subscribed to the foregoing interrogatories.

[SEAL.] (Signed) G. LE GARDEUR,
Notary Public.

57 EXHIBIT MARKED No. 1, Filed with Answer July 28th, 1882.

H. Gally, president; John H. Ludwigsen, cashier.

MECHANICS' AND TRADERS' BANK,
NEW ORLEANS, *June* 19, 1877.

Mess. E. J. Forstall's Sons, New Orleans.

DEAR SIRS: In place of (55) fifty-five New Orleans city bonds of Jackson, Opelousas, & 7% issues, amounting to fifty-four thousand dollars, face value, withdrawn from you on 15 June, I substitute for same fifty-four thousand dollars in premium bonds of the city of New Orleans, bearing date July 1, 1875, of the following serical numbers:

Nos. 5534 to 5559 & 5560 (27 series each of $2,000 each) valued at 30% *dollars*, being the same valuation for which the withdrawn bonds are pledged to Mess. Baring Bros. & Co., p-r pledge dated 11 March, 1876, for the Mechanics' & Traders' Bank.

(Signed) JOHN H. LUDWIGSEN, *Cashier.*

58 *Renewal of Pledge.*

Duplicate.

NEW ORLEANS, 11*th March*, 1876.

Whereas Messrs. Baring Bros. & Co., of London, have continued in favor of the Mechanics' & Traders' Bank of New Orleans a credit of forty thousand pounds sterling in accordance with the terms of the letter of Messrs. Baring Bros. & Co., dated 24th May, 1873, and addressed to the said bank and confirmed by their cable of Oct. 27th, 1873, to Edm. J. Forstall & Sons: Now, in order to secure the full and punctual payment of such amount as may be or become due on account of said credit, the Mechanics' & Traders' Bank does hereby pledge to Messrs. Baring Bros. & Co., and place in the hands of Edm. J. Forstall's Sons, as their representatives, the property described on the list annexed to the present.

And it is hereby agreed that in the event of the non-payment of the amount due as above stated, Edm. J. Forstall's Sons are hereby authorized, as agents of Messrs. Baring Bros. & Co. and of the
59 bank, to cause said pledged property to be disposed of for cash, at public or private sale, at the option of said Edm. J. Forstall's Sons, and the proceeds of said sale shall be applied to the payment of the amount due as aforesaid, with interest accrued thereon, and all commissions, costs, and charges attending said sale, the obligation of the bank for any balance that may be left uncovered by the proceeds of said sale remaining in full force.

(Signed) H. GALLY, *President.*
(Signed) MOSES HARRIS, *Cashier.*
(Signed) EDM. J. FORSTALL'S SONS, *Agents.*

Duplicate.

	Face value.	Market value.
No-. 2435, 2436, 2875–2877, 2881–2884, 2887, 2708–2718, 2861–2868, 2869–2870, 5120–5138, 5643–5657, 4547–4549, 4160, 4190, 4593, 130–137:		
79 New Orleans city consols bonds of $1,000 ea.	$79,000 @ 40c.	31,600
No-. 490–500, 343, 458–461, 748–757, 1454–1457:		
60 30 New Orleans city Jackson R. road bonds of $1,000	30,000 @ 30c.	9,000
No-. 3101–3194, 2215–2239, 5089–5119:		
150 New Orleans consolidated bonds of $1,000 ea.	150,000 @ 40c.	60,000
A. Nos. 3963–3965, 3952–3957, 3876–3877, 3860, 3476, 3443 @ 3448, 3886–3900, 5197–5202, 5224–5227, G 87, J 436, A 1171, 5947:		
48 New Orleans consolidated city bonds of $1,000 ea.	48,000 @ 40c.	19,200
B. No-. 73, 234, 235, 255, 258, 265, 278, 296, 322, 368, 683, 802, 916, 971:		
14 New Orleans city Jackson R. R. bonds of $1,000 ea.	14,000 @ 30c.	4,200
C. No-. 101, 161, 366, 390, 1114:		
5 New Orleans city Opelousas R. R. bonds of $1,000 ea.	5,000 @ 30c.	1,500
No-. 24, 25, 26:		
3 New Orleans city consolidated bonds of $1,000 ea.	3,000 @ 40c.	1,200
61 No. 1190, 349, & 718:		
3 New Orleans city bonds of $1,000 ea.	3,000 @ 30c.	900
No-. 321, 225:		
2 New Orleans city bonds of $500 ea.	1,000 @ 30	300
No. 1971:		
1 New Orleans city Jackson R. R. bond of $1,000	1,000 @ 30	300
	$334,000	$128,200
No-. 7145, 7146:		
2 Louisiana State consol bonds, 7%, of $1,000 ea.	2,000 @ 70c.	1,400
No-. 2856, 2878, 2879, 2880:		
4 Louisiana State consol bonds, 7%, of $100 ea.	400 @ 70	280
Total in State & city bonds		$129,880

Duplicate.

Drawer.	Endorser.	When due.	
Von Phul Bros.	Secured by note of H. Von Phul, Jr., 13th Ap'l, 1871, secured by mortgage.	Jan'y 19, 1872	$10,000
Do.	Secured by note of H. Von Phul, Jr., of $10,000, bearing mortgage, & A. S. Williams' note for $4.534, dated Ap'l 12, '73, @ 5 years after date, all bearing mortgage.	Feb'y 6, 1872	10,000
62			
J. A. Gresham	Mortgage note	Sept. 3, 1873	7,000
Do.	do.	" "	2,000
L. F. Generes	do.	Nov'r 18, '75	8,289 23
N. C. Mann	M. Aronstein	Ap'l 14, '76	750
C. M. Soria	42 shares Factors' & Traders' Ins'ce; 10 shares Stern Fertilizing C'y.	M'ch 31, '76	5,000
J M. Hoyle	Richard Loyd	Ap'l 4, '76	2,000
S. H. Kennedy	Stock, City Bank of Houston.	Demand	10,000
H. W. Connors	25 shares sugar shed stock; 87 Union Nat'l B'k stock.	Demand	3,250
O. T. Valette	90 shares Valette Dry Dock C'y.	May 12, '76	3,000
M. Aronstein	B. Matharun	Ap'l 17, '76	3,000
Bienville Oil Works	Policy of ins'ce	" " "	4,000
P. Laberie	Mortgage notes	" 20, '76	2,000
Wolf & Marks	Loab, Gumbel & Simon	" 12, '76	2,000
Joseph Dreyfus	do.	" 12, "	2,572 75
Schwabacher, Frowenfield & Pfeifer.	Alcus, Scherck & Autey	" 28, "	6,500
63 M. Aronstein	A. Lehman & Co.	" 27, "	1,000
J. Bloom & Co.	Moses Pfeifer	" 13, "	1,250
Do.	do.	" 23, "	1,250
Do.	do.	" 28, "	500
Alfred Dameron	Gaines & Relf	" 21, "	1,451 13
A. B. Meyers	John Myers & Son	May 2, "	1,682 54
			$218,315 45

E. & O. E.
New Orleans, 11th March, 1876.
(Signed) MOSES HARRIS, *Cashier.*

EXHIBIT MARKED No. 2, Filed with Answer 28th July, 1882.

Copy.

NEW ORLEANS, *May 22nd*, 1879.

Messrs. Edm. J. Forstall's Sons:

We have sold this day for your account, as instructed, for cash,

$266,000 city consol'd bonds, signed by Crossman, @ 31½	$83,790
$13,000 city consol'd bonds, signed by Lewis, @ 28c.	3,640
$1,000 city consol bonds, signed by Monroe, @ .28	280
$54,000 premium bonds @ .25¾	13,905
$2,000 State consol'd — @ .49¾	995

	Less ¼% brokerage on 280,000 city consol b'ds	$700	
64	⅛% on $54,000 prem. bonds	67	50
	¼% on 2,000 State consol'd —	5	
		$772	50

(Signed) REYNÉS & VILLERÉ.

EXHIBIT MARKED No. 3, Filed with Answer July 28th, 1882.

Bonds sold as follows:

City consol'd bonds:

1880.				
May 21.	$9,000	@ .37¾		$3,397 50
	41,000	" .37		15,170 00
" 24.	50,000	" .38		19,000 00
" 25.	13,000	" .30		3,900 00
	1,000	" .30		300 00
" 27.	166,000	" .37⅞		62,872 50
	$280,000			$104,640 00

1880.				
June 3.	$10,000	premium bonds	@ .32⅞	$3,287 50
	10,000	do. do.	.33¼	3,325 00
	34,000	do. do.	.33⅛	11,262 50
	$54,000			$17,875 00

1880.				
May 25.	$2,000	La. State bonds	@ .44¾	$895 00
	400	do. do.	" .43½	174 00
	$2,400			$1,069 00

EXHIBIT MARKED No. 4, Filed with Answer 28th July, 1882.

Copy.

NEW ORLEANS, *May 22d*, 1879.

Mess. Edm. J. Forstall's Sons:

We have sold this day for your account, as instructed,
65 for cash, $266,000 city consol'd bonds, signed by Crossman, @ .31½ ---------- $83,790
$13,000 city consol'd bonds, signed by Lewis, @ 28c. --- 3,640
$1,000 city consol'd bonds, signed by Monroe, @ .28 --- 280
$54,000 premium bonds @ .25¾ ---------- 13,905
$2,000 State consols @ .49¾ ---------- 995

Less ¼% brokerage on 280,000 city consol'd bonds	$700	
Less ⅛ on 54,000 prem. bonds	67	50
¼ on 2,000 State consols	5	
	$772	50

(Signed) REYNES & VILLERÉ.

B.

Copy.

NEW ORLEANS *May 22d*, 1879.

Mess. Edm. J. Forstall's Sons, city.

DEAR SIRS: Upon examination of the city consolidated bonds sold for your account this day for cash, as instructed by you, we find that two coupons are missing on each bond, and under the rules of the new stock exchange you must either deliver the coupons with the bonds or account for the coupons in cash. You will therefore please send Mess. Isidore Newman & Bro., the buyers, a check
66 for $16,800, the same being for 2 coupons of $30 each on 280 bonds.

Very truly y'r-,

(Signed) REYNES & VILLERÉ.

NEW ORLEANS, *May 28th*, 1879.

Mess. Edm. J. Forstall's Sons.

DEAR SIRS: We have this day sold for your account, as instructed, the following promissory notes to Mess. A. Carriere & Sons:

Aug. Bohn, demand note, secured by mortgage—note, $2,500—and forty shares Vallette dry dock for $4,000, at par.

M. Aronstein's note, dated March 3d, 1879, pay't 90 d. after date, order of A. Lehman & Co., for $1,021.33, @ 8% dis't.

S. Dreyfus & Co.'s note, dated March 3d, 1879, pay't 90 d. after date, order Benj. Dreyfus, for $941, @ 8% dis't.

A. Thomson & Co.'s note, dated Febr'y 12th, 1879, pay't 4 m. after date, order of Stern's Fertilizer and Manuf'g Co., $1,271.10, @ 8%.

A. E. Bosley's note, dated March 3d, 1879, pay't 90 d. after
67 date, order of Caleb W. Parker & Co., for $500, @ 8%.

F. A. Gonzales & Bro.'s note, dated March 6th, 1879, pay't 65 d. after date, for 520.78, on which am't $130.67 were paid on ac., @ 8%.

E. H. Adams & Bro.'s note, dated January 13th, 1879, pay't 90 d. after date, order of Isaac Bridge, for $2,500, and on which said amount $500 were paid on ac. and balance extended for 60 d., @ 8%.

Olympe Boisse's note, date- March 15th, 1879, pay't 60 d. after date, for $700, and on which $350 were paid on ac. and balance extended, with no specified maturity, with 8% int. from date, @ 8%.

T. Murphy's note, order of Ed. Murphy, dated March 1st, 1879, and pay't 60 d. after date, for $608.66, endorsed also by Sybrandt & Co., and now being past due for twenty-five per cent. of the face, $152.16.

Less our commission for negotiation—say ¼%, $26.43.

68 We have offered for sale the mortgage notes of Von Phul Brothers—say two notes of $10,000 each, secured by mortgage same amount; also a mortgage note of N. S. Williams for $4,534, being also part of the collaterals for the said notes, and could not find a bid. We were told by Mess. A. Carrière & Sons that the notes and collaterals were of no value; we were told by Mr. S. H. Kennedy that the notes and collaterals were utterly worthless, and that one million of that paper would not be worth ten cents.

Very respectfully yours,
(Signed) REYNES & VILLERÉ.

Copy.

NEW ORLEANS, *May* 30, 1879.

Mess. Edm. J. Forstall's Sons.

DEAR SIRS: We have sold for your ac., as instructed, note of J. Walter Jones, dated Nov. 1st, 1877, pay't one year after date, for $7,500, with 8% int. from date, secured by mortgage, as per act before N. B. Frist, not. publ., and on which $1,000.00 were

69 paid; $6,500, note of J. Walter Jones, dated Nov. 1st, 1877, pay't two years after date, for $7,500, with 8% int. per annum from date, secured by mortgage, as above, $7,500, less brokerage, 1%; also $400 new State consols, @ .44½, net $178.

Very truly y'rs,
(Signed) REYNES & VILLERÉ.

Copy.

NEW ORLEANS, *June* 3*d*, 1879.

Mess. Edm. J. Forstall's Sons:

Pursuant to your instructions we have offered for sale the note of A. Flotte, endorsed by J. M. Putnam, for $1,560.35, now in litigation before the 3d district court, but could not ascertain its value nor have a bid for it; also the note of Hollingsworth & Flower, endorsed by Hollingsworth, for $500, also in litigation in the 3d district court, but could not obtain a bid, although the note is considered good. The fact of its being in litigation renders it unsaleable.

Very truly y'rs,
(Signed) REYNES & VILLERÉ.

70 B.

Messrs. Baring Bros. & Co., of London, in

				Days.	Interest from 19 March to 4 June @ 5%
1879.					
March 31	By collected demand note Levi & Newman... $6,000				
"	" " 27 days' interest @ 8%..... 36				
			$6,036	65	$54 49
"	surrendered pledge on above (receipts 100 hhds. sugar).....				
April 1	By note Steam Fertiliser Manufact'g C'y.....		1,000	64	8 89
"	" 2 mortgage notes of $500 each, held as pledge, surrendered.....				
"	" received on ac note of John K. Collins & Bros...		200	"	1 78
2	" collected note B. Matharan.....		877	63	7 67
3	" " " A. Lehman & Co.....		3,500	62	30 14
"	" " " Simpson & White.....		552 26	"	4 76
"	" " demand note A. G. Phelps..... $1,000				
"	" " 93 days' interest @ 8%..... 20 66				
			1,020 66	"	8 78
"	" " demand note A. G. Phelps... 700				
"	" " 93 days' interest @ 8%..... 14 46				
			714 46	"	6 15
"	" " note due by A. G. Phelp.....		1,350	"	11 62
"	" " " A. Schwartz & Son.....		765	"	6 59
4	" " " Jos. Leach, 4 bonds surren'd, E. T. B. & Co..		2,500	61	21 18
7	" " on ac. note O. Boisse & E. H. De La Grange.....		350	58	2 82
"	" " note due by H. Gally, pledge & note surrendered.....		1,692 33	"	13 63
8	" " note due by A. Martin.....		1,100	57	8 71
9	" " " A. B. Gernon.....		425	56	3 31
12	" " " I. Frisconi.....		746 50	53	5 48
"	" " " B. Matharan.....		1,000	"	7 36
"	" " " G.W. Hynson & Co., pledge surrendered.....		1,500	"	11 04
"	" " " E. Pilsbury, $3,000; 557 int. p. 36.66, pledge surren'd..		3,036 66	"	22 34
14	" " " A. Martin.....		1,150	51	8 14
"	" " " J. W. White.....		1,000	"	7 08
16	" " on ac. note E. H. Adams & Bro.....		500	49	3 40
17	" " acc'pt'ce Allen, Nugent & Co.....		500	48	3 33
"	" " note due by J. S. Whitaker.....		600	"	4
20	" " " by Kaufman & Isaacs.....		501 82	45	3 13
24	" " " " J. Dreyfus.....		860	41	4 90
May 3	" " Mandeville & N. O Daily P'k't Co.....		485 85	32	2 16
"	" " Webster & Dillingham.....		1,600	"	7 11
"	" " balance note John K. Collins & Bro.....		800	"	3 56
"	" " on ac. note O. Boisse.....		200	"	89
5	" " balance note O. Boisse, $150; interest, $2.10.....		152 10	30	64
"	" " note due by J. Dreyfus & Co.....		940 53	"	3 92
"	" " " Payne, Kennedy & Co.....		653 17	"	2 72
"	" " " John Phelps & Co.....		1,139 75	"	4 75
"	" " interest on note J. K. Collins & Bro.....		5 90	"	02
	Forwarded.....		$39,454 99	.....	$296 49
May 30	To amount brought forward.....		.....	.....	$239,587 63
					$239,587 63
May 30	To balance cash 4 June, 1879.....		.....	.....	$62,302 40

N. B.—To this balance must be added the sum of $16,800, value of 560 coupons belonging to pledged bonds & credited in the sale thereof, should the same be not returned to us by the commissioners of the bank.

Account with Edm. J. Forstall's Sons, Agents.

				Days.	
1879.					
May 5	By amount brought forward		$39,454 99		$296 49
7	" collected note due Kaufman & Isaacs		680	28	2 64
13	" " on ac. note F. A. Gonzales & Bro		130 67	22	40
14	" " note Jean Perique		531 63	21	1 56
16	" " " Augustus Block		750	19	1 98
17	" " " Edw. Ivy		1,200	18	3
"	" " on ac. note O. Boisse & E. H. De La Grange		350	"	87
19	" " note B. Rosenberg		1,512 27	16	3 34
"	" " " Lz. Blum		1,595 17	"	3 54
23	" " " G. Stanton Adams		1,600	12	3 67
24	" " " Dreyfus & Co.		3,000	11	4 58
28	" " demand note A. Bohne, $4,000; sold $4,000; ¼ b'ge, $10		3,990	7	3 88
22	" proceeds sale 266 N. O. city consols @ .31½	$83,790			
"	" do. " 14 ditto @ .28	3,920			
		$87,710			
"	" ¼ brokerage on 280 city consols	700			
			87,010	13	157 14
"	" proceeds sale $54,000 prem. bonds @ .25¾	$13,905			
"	" ⅛ brokerage	67 50			
			13,837 50	"	24 98
"	" proceeds sale $2,000 Louis'a State bonds @ .49¾	$995			
"	" ¼ brokerage	5			
			990	"	1 78
29	" proceeds note M. Aronsteine, $1,021.33 less disc., $1.82	$1,019 51			
"	" proceeds note J. Dreyfus & Co., $941, less disc., $1.68	939 32			
"	" proceeds note A. Thompson & Co., $1,271.10, less disc., $5.36	1,265 74			
"	" proceeds note A. E. Bosby, $500, less disc., $0.88	499 12			
"	" proceeds note F. A. Gonzales & Co., $390.11, less disc., $1.64	388 47			
"	" proceeds note E. H. Adams & Bro., $2,026.66, less disc., $9.90	2,016 76			
"	" proceeds note O. Boisse & E. H. De La Grange, $354.66, less disc., $4.12	350 44			
"	" proceeds note T. Morphy, $608.66, @ 25 %	152 16			
		6,631 57			
"	" ¼ brokerage on above	16 57			
			6,615	6	5 51
30	" proceeds note of Walter Jones, dated Nov. 1, '77, payable one year after date, for $7,500, with 8 % int. from date, secured by mortgage, as per act before N. B. Trist, not. public, and on which $1,000 — paid on ac	$6,500			
"	" proceeds note of Walter Jones, dated Nov. 1, '77, payable two years after date, for $7,500, with 8 % int. from date, secured by mortgage, as per act before N. B. Trist, not. public	7,500			
		$14,000			
"	" less brokerage, 1 %	140			
			13,860	5	9 62
"	" proceeds sales $400 new State consols @ .44½		178	"	13
"	" balance		62,302 40		
			$239,587 63		$524 11

E. & O. E.
New Orleans, 4 June, 1879.

EDM. J. FORSTALL'S SONS,
Agents for Messrs. Baring Bros. & Co., of London.

72 *Memorandum Account of Pledge to Mechanics' & Traders' Bank of New Orleans (in Liquidation).*

1879.				
April 30.	To balance of account as per ac. rendered	Interest from 19 March, '79, to 4 June, @ 5%, 77 days, $2,430.39		$227,267 09
" " "	cash 19 March, 1879, £46,618 17 10, @ 4.87½			
" "	commission paid for ascertaining value of 2 notes of Von Phul Brothers, secured by mortgage, for $10,000 each, say $20,000, on which no bid could be obtained, and declared to be utterly worthless, say ½ %			50
" "	paid attorneys' fees for services rendered up to date, with matter of the foreclosure of pledge of M. & T. B'k, in liquidation, as per agreement			1,500
" "	5% commission on $177,285.23			8,864 26
" "	interest from 19 March to 4 June, '79, on dr...		$2,430 39	
" "	less interest from credit side		524 11	
				1,906 28
	Forward			$239,587 63

73 C.

Renewal of Pledge.

NEW ORLEANS, 11*th March*, 1876.

Whereas Messrs. Baring Bros. & Co., of London, have continued in favor of the Mechanics' & Traders' Bank of New Orleans a credit of forty thousand pounds sterling in accordance with the letter of Messrs. Baring Bros. & Co., dated 24th May, 1873, and addressed to the said bank, and confirmed by their cable of October 27, 1873, to Edm. J. Forstall & Sons: Now, in order to secure the full and punctual payment of such amount as may be or become due on account of said credit, the Mechanics' & Traders' Bank does hereby pledge to Messrs. Baring Bros. & Co. and place in the hands of Edm. J. Forstall's Sons, as their representatives, the property described on the list annexed to the- present-.

And it is hereby agreed that in the event of the non-payment of the amount due, as above stated, Edm. J. Forstall's Sons are hereby authorized, as agents of Messrs. Baring Bros. & Co. and of the bank, to cause said pledged property to be disposed of for cash, at public or private sale, at the option of said Edm. J. Forstall's Sons,
74 and the proceeds of said sale shall be applied to the payment of the amount due as aforesaid, with interest accrued thereon, and all commissions, costs, and charges attending said sale, the obligation of the bank for any balance that may be left uncovered by the proceeds of said sale remaining in full force.

(Signed) H. GALLY, *President.*
(Signed) MOSES HARRIS, *Cashier.*
(Signed) EDM. J. FORSTALL'S SONS, *Agents.*

Received, New Orleans, 20 June, '76, from Messrs. Forstall's Sons all July, '76, coupons due on city consolidated bonds held by them and pledged for credit granted Messrs. Baring Bros. & Co.

Signed for Mechanics' & Traders' Bank.

P-r L. C. VILLERÉ.

A.

Received, New Orleans, 28 December, '76, from Messrs. Forstall's Sons all January, '77, November, '76, and December, '76, coupons due on city consolidated bonds held by them and pledged for credit granted by Messrs. Baring Bros. & Co.

Signed for Mechanics' & Traders' Bank.

75 L. C. VILLERÉ.

Statement of Coupons of New Orleans City Consolidated Bonds Held by Mechanics' & Traders' Bank for Collection and on Deposit for Account of Messrs. E. J. Forstall's Sons, Agents for Messrs. Baring Bros. & Co., of London.

Nos. 2435, 2436, 2875–2877, 2881–2884, 2887, 2708–2718, 2861–2868, 2869, 2870, 5120–5138, 5643–5657, 4547–4549, 4160, 4190, 4593:

71 New Orleans city consolidated bonds of $1,000 ea.	
71 coupons, due July 1st, 1876, of $30 each, of above bonds	$2,130
71 coupons, due January 1st, 1877, of 30 each, of above bonds	2,130

Nos. 130–137:

8 New Orleans city consolidated bonds of $1,000 ea.	
8 coupons, due May 1, '76, of $30 each, of above bonds	240
8 coupons, due Nov. 1, '76, of $30 each, of above bonds	240

Nos. 3963–3965, 3952–3957, 3876, 3877, 3860, 3476, 3443–3448, 3886–3900, 5197–5202, 5224–5227, 1171:

45 New Orleans city consolidated bonds of $1,000 ea.	
76 45 coupons, due July 1st, 1876, of $30 each, of above bonds	1,350
45 coupons, due January 1st, 1877, of $30 each, of above bonds	1,350
G 87. 1 New Orleans city c'd bond of $1,000.	
1 coupon, due May 1, '76, of $30, of above bond	30
1 coupon, due Nov'r 1, '76, of $30, of above bond	30
J 436. 1 New Orleans city consolidated bond of $1,000.	
1 coupon, due July 1st, 1876, of $30, of above bond	30
1 " January 1st, 1877, of $30, of above bond	30

No. 5947:

1 New Orleans city consolidated bond of $1,000.	
1 coupon, due June 1st, 1876, of $30, of above bond	30
1 coupon, due Dec'r 1st, 1876, of 30, of above bond	30

Nos. 3101–3194, 2215–2239, 5089–5119:

150 New Orleans city consolidated bonds of $1,000 ea.	
150 coupons, due July 1st, 1876, of $30 each, of above bonds	4,500
150 do., due January 1st, 1877, of $30 each, of above bonds	4,500

Nos. 24, 25, 26.

3 New Orleans city consolidated bonds of $1,000 ea.	
3 coupons, due May 1st, '76, of $30 each, of above bonds--	90
3 coupons, due Nov. 1, '76, of $30 each, of above bonds---	90
	$16,800

77 *Petition. Filed June* 12, '79.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans.

Fifth District Court.

E. J. FORSTALL'S SONS
v.
LEOPOLD LA COMB, FRANK M. HALL, and J. A. BLAFFER, Liquidator of Mechanics' & Traders' Bank, etc. } 10002.

To the Honorable W. H. Rogers, judge of the fifth district court for the parish of Orleans, State of Louisiana:

The petition of E. J. Forstall's Sons, a commercial firm domiciled and doing business in the city of New Orleans, composed of Oscar J. Forstall, Ernest L. Forstall, and Adolphe Schreiber, agents for Baring & Bros. & Co. of London, respectfully represents that on or about the 10th of March, 1876, the Mechanics' and Traders' Bank, then a duly incorporated bank under the laws of Louisiana and doing a regular banking business, in a solvent condition, deposited in the hands of petitioners, in their said capacity as agents for Baring Bros. & Co., by act of pledge given under private
78 signature by the proper officers of said bank (together with certain other specified assets), two hundred and eighty city of New Orleans consolidated bonds of $1,000 each, with interest coupons annexed, to secure an open credit of £40,000, with all interest, costs, charges, commissions, and expenses.

That on or about the 20th of June, 1876, and 28th of December, 1876, your petitioner placed in the said Mechanics' and Traders' Bank, then doing a regular banking and collecting business, the coupons of said bonds maturing in July, 1876, and in January, 1877, to the number of five hundred and sixty (560) for the sole purpose of having them collected as fruit of the said pledge, and for which they hold the receipts of said bank, whereof copies are hereto annexed and made part hereof, and for greater certainty plaintiffs herein annex a statement and list of said bonds and said coupons which they make a part of this petition and mark Exhibit A.

79 Petitioners allege that the city of New Orleans has refused or neglected to pay said coupons at their respective maturities or since, and that they have remained in the charge and custody of the bank, holding the same as agents of the pledgees.

Your petitioners up to the date when said bank became insolvent and by order of this honorable court was placed in the hands of certain liquidators, "to wit," Leopold La Comb, Frank M. Hall, and J. A. Blaffer, who now are in possession of the said 560 coupons, and

who refuse to restore the same to your petitioners, although amicably requested so to do.

Petitioners aver that under the acts of pledge they sold, or caused to be sold, on or about the 22d day of May, 1879, the two hundred and eighty bonds aforesaid to which said coupons belong, and that by the wrongful and illegal refusal of said commissioners to restore said coupons to said bonds they are prevented from making
80 due delivery of said bonds with proper coupons annexed, and that under the usage and custom of the stock exchange of this city they will be compelled to account for the missing coupons or cash at the par value of the same, to wit, at $16,800.

That by this illegal and unlawful refusal to restore said coupons the said commissioners have acted outside their powers and authority as commissioners and become personally and *in solido* liable to your petitioners in the said sum of sixteen thousand eight hundred dollars, and to all other creditors of the bank for such damage as they may sustain.

Petitioners aver that they have, according to the terms of the pledge, sold the bonds and other assets pledged to them to secure said credit of "forty thousand pounds sterling," with interest, costs, commissions, and charges, and that after the sale of all saleable assets they are still left ordinary creditors of the insolvent bank in the sum of —, as will appear & be more fully seen by annexed
81 *procés verbal* of sale and account current made part hereof, marked B.

Petitioners further allege that they fear said liquidators will part with or dispose of said coupons during the pendency of this suit.

Petitioners annex hereto a copy of the act of pledge heretofore mentioned and make it a part of this petition, marked Exhibit C.

Wherefore your petitioners pray that, the annexed exhibits, affidavits, and bond being considered, *that* the said Leopold La Comb, Frank M. Hall, and J. A. Blaffer be cited and served with copies of this petition, as liquidators of said Mechanics' and Traders' Bank and individually, and, after due proceedings had, that the said five hundred and sixty coupons detached from the consolidated bonds of the city of New Orleans, as per statement and exhibit annexed and marked A, be decreed to be the property of your petitioner- as aforesaid, and that the said defendants be ordered to return
82 the same; that, if the same have been parted with or disposed of, so that they cannot be returned to your petitioners, *that* the said Leopold La Comb, Frank M. Hall, and J. A. Blaffer be condemned, *in solido* and in their individual capacity, to pay to your petitioners the said sum of sixteen thousand eight hundred dollars ($16,800), with interest from legal demand, and all costs; that a writ of sequestration do issue from this honorable court, directed to the civil sheriff of the parish of Orleans, ordering and directing him to take into his possession and keep, subject to the orders of this court, the five hundred and sixty coupons, as specifically designated and described in annexed statement and Exhibit A, and for all costs and for all general and equitable relief.

(Signed) D. S. BRYON, *Att'y.*

Oscar J. Forstall, member of the firm of E. J. Forstall's Sons, agents and attorneys-in-fact for Messrs. Barring Brothers &
83 Company, of London, England, who are absent from the State, being first duly sworn, did depose and say that the facts and allegations in the above petition contained are true and correct, and that he fears the parties defendants herein will part with or dispose of the five hundred and sixty (560) coupons described in Exhibit A during the pendency of this suit.

(Signed) OSCAR J. FORSTALL.

Sworn to and subscribed before me this 12th day of June, 1879.

(Signed) JNO. J. HANNON,
D'y Clerk.

Bond for Writs of Attachment and Sequestration.

Know all men by these presents that we, E. J. Forstall's Sons, agents for Barring Bros. & Co., as principals, and E. L. Carrière, as surety, of the city of New Orleans and State of Louisiana, are held — firmly bound unto Thomas Duffy, clerk of the fifth district court for the parish of Orleans, and his successors in said office, in the sum of five hundred dollars, lawful money of the United States of
84 America; for which payment, well and truly to be made to the said clerk or his successors, we bind ourselves *in solido*, and each of our executors, administrators, heirs, and assigns, firmly by these presents.

Sealed with our seals and dated the 12th day of June, 1879.

Whereas the said E. J. Forstall's Sons, agents for Baring Bros. & Co., have this day presented a petition to the fifth district court for the parish of Orleans, praying a writ of sequestration to issue in case entitled E. J. Forstall *v.* L. La Comb *et als.*, and No. 10002 on the docket of the fifth district court:

Now, the condition of the above obligation is that we, the above-bound principal and surety, will well and truly pay to the said clerk or his successors in office, for the benefit of any and all persons interested in said suit, all such damages as may be recovered against us in case it should be decided that the said writ was wrong-
85 fully obtained.

(Signed) EDM. J. FORSTALL'S SONS, [SEAL.]
Agent for Barring Bros. & Co.

(Signed) E. L. CARRIERE. [SEAL.]

Signed, sealed, and delivered in the presence of—

(Signed) D. S. BRYON.

Let a writ of sequestration issue herein as prayed for and according to law upon petitioner- furnishing bond, with good and solvent security, in the sum of five hundred dollars, conditioned as the law directs.

New Orleans, June 12th, '79.

(Signed) W. H. ROGERS, *Judge.*

EXHIBIT MARKED No. 5, Filed with Answer 28th July, 1884.

Answer and Exhibit. Filed Nov. 10, '79.

Fifth District Court for the Parish of Orleans.

E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co.,
v.
LEOPOLD LA COMBE, FRANK M. HALL, JNO. A. BLAFFER, Commissioners for the Liq'n of M. & T. Bank. } No. 10002.

And now come Leopold La Combe, F. M. Hall, and John A. Blaffer, commissioners for the liquidation of the Mechanics' & Traders' Bank, in liquidation, under the order of this hon. court, and, for answer to the plaintiffs demand, deny all and sin-
86 gular the allegations therein contained except such as are hereinafter specially admitted and pleaded.

Defendants, answering specially, say that when they were put in possession by the civil sheriff, J. R. A. Gauthreaux, under the order of this court of the assets of the said bank, said sheriff duly delivered to respondents three hundred and eighty coupons only of those claimed by plaintiffs, which three hundred and eighty coupons respondents on the — day of ——, 1879, deposited with the said sheriff under and in obedience to the writ of sequestration issued in this cause; that the remaining one hundred and eighty coupons of the said five hundred and eighty coupons claimed by the plaintiff have never been in the possession nor under the control of respondents, and they aver that they have made every effort to find them without success; that they have advertised for them in vain, and have notified the commissioners of the consolidated debt not to fund
87 or to pay the same unless presented by respondents or their assigns. And respondents are informed and believe, and they so aver, that the said one hundred and eighty coupons have never been presented to the commissioners of the consolidated debt, either for funding or payment, and they are not funded or paid.

And defendants, in their capacity, further answering specially, say that the sale by plaintiff-, on or about the 22d May, 1879, of the two hundred and eighty consolidated bonds, fifty-four thousand dollars in premium bonds, two thousand dollars La. State bonds, and four hundred dollars State consols, pledged by the Mechanics' and Traders' Bank to the firm of Baring Bros. & Co., were not sold according to the usage well known in this city in such cases, nor in accordance with the terms of the contract of pledge, or according to the law; that the said bonds were sold without notice to respondents; were all sold at one time; late in the day, below the market price, and were bought in by the plaintiffs themselves; that
88 said sale was illegal and wrongful, and has caused great loss, damage, and injury to the creditors of said bank in liquidation, and for which plaintiffs are liable *in solido* to these respond-

ents as the liquidators or commissioners thereof; and respondents specially reserve their right to sue the plaintiffs for said loss, damage, and injury in a separate suit hereafter.

And these defendants, further specially answering, deny the correctness of the account sued on herein, or that they owe in any capacity whatever any such remainder as is alledged by the plaintiffs to be due them, and for specification point out the following items as improper, unjust, and wrongfully made:

Items on the credit side of said account, viz:

No. 2. For commissioners, etc., $50.
No. 3. " paid attorneys, etc., $1,500.
No. 4. " 5%, commissioners, etc., $8,864.26.

Items entered on the credit side:

No. 46. Brokerage on note of A. Bohn, $10.00.

No. 47 & 48. Aggre-ate of proceeds of sale of 280 bonds, the
89 same having been illegally and wrongfully sold, $87,710, as hereinbefore set forth.

No. 49. Brokerage thereon, $700.
No. 50. Proceeds of $54,000 premium bonds, $13,905, the same having been illegally and wrongfully sold, as hereinbefore set forth.
No. 51. Brokerage thereon, $67.50.
No. 52. Proceeds $2,000 La. State bonds, $995, the same having been illegally sold, as hereinbefore set forth, and the brokerage thereon, $5.00.
No. 53. Item of brokerage on various notes therein enumerated, $16.57.
No. 54. Because no interest was allowed on said note, altho' it was due (on the note of $7,500).
No. 55. Because no interest is allowed on said note, altho' it was due (on note of $7,500).
No. 56. Item of brokerage on said notes, $140.
No. 57. Item proceeds $400 new State consols, $178, for the names hereinbefore set forth.

90 All of which items appear fully set forth on the account rendered by plaintiffs to the said bank, and which account respondents herewith file and refer to as a part hereof for further certainty.

Wherefore respondents ask for judgment in their favor rejecting all the items of said account herein opposed and denied by them as illegal and wrongful, and for judgment in their favor and against the plaintiffs' demand for the one hundred and eighty coupons which have never been in their possession, and for judgment in their favor and against the plaintiffs rejecting their said account and reserving to defendants, in their said capacity as commissioners, the right to sue hereafter for all losses, damage, and injury by the bank sustained

on the creditors thereof by the illegal and wrongful sale of the bonds pledged to said plaintiffs by the Mechanics' & Traders' Bank, and for such further relief and judgment as the court shall find to be equitable and just, and for general relief.

(Signed) SINGLETON & BROWNE,
Att'ys for Com'rs.

(Signed) E. W. HUNTINGTON.

91 *Memorandum Account of Pledge to*

Mechanics' & Traders' B'k of New Orleans (in liqui

				5 % of.
1879.				
1. April 30	To balance of account as per account rendered—cash 19 March, £46,618 19 10, @ 4.87½	77	2,430 39	227,267 09
2. X "	" commission paid for ascertaining value of 2 notes of Von Phul Bros., secured by mortgage, for $10,000 ea., say, $20,000, on which no bid could be obtained & declared to be utterly worthless, say ¼ of			50
3. X "	" paid attorneys' fees for services rendered up to date with matter of the foreclosure of pledge of Mechanics' & Traders' Bank, in liquidation, as per agreement.			1,500
4. X "	" 5 % commission on $177,285.23			8,864 26
"	" interest from 19th M'ch to 4th June, on the debit side	2,430 39		
	Less interest from credit side	524 11		1,906 28
	Forward		2,430 39	239,587 63

Mess. Barring Bros & Co., of London. 92

dation) in account with Edm. J. Forstall's Sons, agents.

			Days.	5 %.		
1879.						
March 31		By collected demand note Levi & Newman			6,000	
1.		" " 27 ds.' interest @ 8 %	65	54 49	36	
						6,036
		surrendered pledge on above (receipt 100 hhds. sugar)				
2. April	1	" note Stern Fert. M'f'g Co.	64	8 89		1,000
		2 mortgage notes of $500 ea., held as pledge, surrendered				
3.	"	" received on ac. note Jno. K. Collins	64	1 78		200
4.	2	" collected note of B. Matharan	63	7 67		877
5.	3	" " " A. Lehman & Co.	62	30 14		3,500
6.	"	" " " Simpson & White	62	4 76		552
		" " demand note A. G. Phelps			1,000	
7.		" " 93 ds.' interest @ 8 %	62	8 78	20 66	
						1,020 66
	"	" " demand note A. G. Phelps			700	
8.		" " 93 ds.' interest @ 8 %	62	6 15	14 46	
						714 46
9.		" " note due by A. G. Phelps	62	11 62		1,350
10.	"	" " " A. Schwartz & Son	62	6 59		765
11.	4	" " " G. Leach, 4 bonds surrendered E. T. B. & Co.	61	21 18		2,500
12.	7	" " on ac. note O. Boisse & E. De H. La Grange	58	2 82		350
13.	"	" " due by H. Gally, pledge note sur'd	58	13 63		1,692 33
14.	8	" " " A. Martin	57	8 71		1,100
15.	9	" " " A. B. Gernon	56	3 31		425
16.	12	" " " J. Friseoni	53	5 48		746 50
17.	"	" " " B. Matharan	53	7 36		1,000
18.	"	" " " G.W. Hynson & Co., pledge surr'd	53	11 04		1,500
	"	" " " E. Pilsbury			3,000	
19.		" " 55 ds.' interest (pledge surr'd)	53	22 34	36 66	
						3,036 66
20.	14	" " note due by A. Martin	51	8 14		1,150
21.	"	" " " J. W. White	51	7 08		1,000
22.	16	" " on ac. note E. H. Adams & Bro.	49	3 40		500
23.	17	" " accept. Allen Nugent & Co.	48	3 33		500
24.	"	" " note due by J. S. Whitaker	48	4		600
25.	20	" " " Kaufman & Isaacs	45	3 13		501 82
26.	24	" " " J. Dreyfus	41	4 90		860
27. May	3	" " note Mandeville & N. O. Daily P'k't Co.	32	2 16		485 85
28.	"	" " note Webster & Dillingham	32	7 11		1,600
29.	"	" " balance note Jno. K. Collins & Bro.	32	3 56		800
30.	"	" " on ac. note O. Boisse	32	89		200
31.	5	" " balance note O. Boisse, $150; int., $2.10	30	64		152 10
		Forward		285 08		36,715 64

Memorandum of Account of

93			
1879. May 30	To amount bro't forward	2,430 39	239,587 63
95	Forward	2,430 39	239,587 63
1879. May 30	To amount bro't forward	2,430 39	239,587 63
		2,430 39	239,587 63
1879. May 30	To balance cash 4th June, 1879		$62,302 40

N. B.—To this balance must be added the sum of $16,800, value of 560 coupons belonging to pledged bonds & credited on the sale thereof should the same be not returned to us by the commissioners of the bank.

[Written across page 93:] 10002. 5th dist. court. Filed Nov. 10, '79. Jno. J. Hannon, d'y clerk.

Pledge, &c.—Continued.

94				Days.	5 %		
1879.							
May	5		By amount brought forward		285 08		36,715 64
32.	"		" collected note due by J. Dreyfus & Co	30	3 92		940 53
33.	"		" " " of Payne, Kennedy & Co	30	2 72		653 17
34.	"		" " " Jno. Phelps & Co	30	4 75		1,139 75
35.	"		" " int. on note J. K. Collins & Bro	30	02		5 90
36.	7		" " note due Kaufman & Isaacs	28	2 64		680
37.	13		" " on ac. note F. A. Gonzales & Bro	22	40		130 67
38.	14		" " note Jean Perique	21	1 56		531 63
39.	16		" " " Augustus Block	19	1 98		750
40.	17		" " " Edw'd Ivy	18	3		1,200 00
41.	"		" " on ac. note O. Boisse & E. H. De Lagrange	18	87		350
42.	19		" " note B. Rosenberg	16	3 34		1,512 17
43.	"		" " " L. Blum	16	3 54		1,595 17
44.	23		" " " G. Stanton Adams	12	2 67		1,600
45.	24		" " " Dreyfus & Co	11	4 58		3,000
46.	X 28		" " demand note A. Bohn, $4,000, sold $4,000; ¼ brokerage, $10	7	3 88		3,990
47.	X 22		" " proceeds sale 266 N. O. city consols @ .31½			83,790	
48.	"		" " proceeds sale 14 N. O. city consols @ .28			3,920	
						87,710	
49.			less ¼ brokerage on 280 city consols	13	157 14	700	87,010
50.	X "		" collected proceeds sale $54,000 premium bonds @ .25¾			13,905	
51.			less ½ of brokerage	13	24 98	67 50	13,837 50
	X "		" proceeds sale $2,000 La. State bonds @ .49¾			995	
52.			" less ¼ brokerage	13	1 78	5	990
53.	29		" proceeds note M. Aronstein, $1,021.33; dis., 1.82			1,019 51	
			" proceeds note J. Dreyfus & Co., $941; dis., 1.68			939 32	
			" proceeds note A. Thomson & Co., $1,271.10; dis., 5.36			1,265 74	
			" proceeds note A. E. Bosby, $500; dis., .88			499 12	
			" " " F. A. Gonzales & Co., $390; 1.64			388 47	
	X		" proceeds note E. H. Adams & Bro., $2,026.66; dis., 9.90			2,016 76	
			" proceeds note O. Boisse & Lagrange, $354.66, dis., 4.17			350 49	
			" proceeds note T. Morphy, $608.66, @ .25 of			152 16	
						6,631 57	
			¼ of brokerage on above	6	5 51	16 57	6,615
54.	X 30		" proceeds of note Walter Jones, dated Nov. 1, '77, payable 1 yr. after date, $7,500, with 8 % int. from date, secured by mortgage, as p r act before N. B. Trist, not. pub., & on which $1,000 p'd on ac			6,500	
55.	X		" proceeds note of ditto, same date, payable 2 years after date, for $7,500, with 8 % int. and secured by mortg. — act before N. B. Trist, not. pub			7,500	
						14,000	
56.	X		less brokerage, 1 %	5	9 62	140	13,860
96			Forward		523 98		177,107 23
1879.							
May	30		By amount amount bro't forward		523 98		177,107 23
	"		" proceeds sales $400 new State consols at .44½	5	13		178
	"		" balance				62,302 40
					524 11		239,587 63

X Items marked thus objected to by the commissioners.

E. & O. E.
New Orleans, 4th June, 1879.
(Signed)

EDM. J. FORSTALL'S SONS,
Agents for Messrs. Baring Bros. & Co. of London.

97 *Certificate.*

STATE OF LOUISIANA,
Civil District Court for the Parish of Orleans:

I hereby certify the foregoing petition, affidavit, bond for writs of attachment and sequestration, order, document marked B, 4 letters from Mess. Reynes & Villeré to Edm. J. Forstall's Sons, documents marked B, C, A, the judgment and the answer and exhibit to be true and correct copies from the originals on file in the office of the clerk of the late fifth district court for the parish of Orleans, in the suit of E. J. Forstall's Sons *v.* Leopold La Comb, Frank M. Hall, and J. A. Blaffer, liquidators of the Mechanics' and Traders' Bank, No. 10002, the records of which court have been by law transferred to this honorable court and are now in my possession as custodian.

Clerk's office, New Orleans, June 17th, 1882.

[SEAL.] (Signed) E. A. LUMINAIS,
D'y Clerk.

98 EXHIBIT MARKED No. 6, Filed with Answer 28 July, 1882.

Judgment.

Fifth District Court.

E. J. FORSTALL'S SONS
v.
LEOPOLD LACOMB *et als.*, Liquidators, etc. } No. 10002.

On the trial of this case the claim of plaintiffs for the return to them of five hundred and sixty (560) coupons of city bonds having been duly made out and proved, and it having been admitted that three hundred and eighty of said coupons have been returned by said defendants to said plaintiffs since the institution of this suit, and that the balance of one hundred and eighty (180) coupons have been lost, mislaid, or stolen from the said bank prior to its being put in liquidation and never came into the possession of the defendants as liquidators, it is ordered, adjudged, and decreed that there be judgment herein in favor of the plaintiffs, E. J. Forstall'- Sons,

99 and against the defendants, Leopold Lacomb, Frank M. Hall, and Samuel Stafford, liquidators of the Mechanics' and Traders' Bank, for the face value of the one hundred and eighty lost coupons, to wit, for five thousand four hundred dollars, and all costs of this suit, and that the same be paid in due course of administration and liquidation of said bank.

Judgment rendered May 17th, 1880.

Judgment signed May 21st, 1880.

(Signed) W. H. ROGERS, *Judge.*

EXHIBITS MARKED Nos. 7, 8, and 9, Filed with Answer 28 July, 1882.

Opposition to Tableau of E. J. Forstall's Sons, Agents, etc. Filed Febr'y 25, '80.

STATE OF LOUISIANA:

Civil District Court for the Parish of Orleans, 5th Dist. Court.

A. V. WOGAN *ex rel.*
v.
MECHANICS' & T. BANK. } No. 9744.

Edm. J. Forstall's Sons, agents for Messrs. Barrings Brothers & Co., London, oppose the homologation of the tableau filed by
100 the commissioners of the said bank in the above-entitled case on the 5th of February, 1880, and for opposition thereto they aver that the said bank owes to said Barring Brothers & Co. the sum of sixty-two thousand three hundred and two $\frac{40}{100}$ dollars (62,302.40), on which said sum they are entitled to a dividend in the same manner and for the same amount as other creditors of the bank; that the said commissioners have failed and neglected to allow any dividend whatever on said sum, although they confess that they have in hand funds to pay a dividend of ten (10) per cent.

Wherefore said Forstall's Sons, agents, do pray this hon. court to order said commissioners, to wit, Lacombe, Hall, and Blaffer, to place Messrs. Baring Brothers & Co.'s claim on their said tableau, and to pay thereon the said dividend of ten (10) per cent., *or* in duty bound to do, and for all general and equitable relief.

(Signed) D. S. BRYON, *Att'y.*

101 *Order.*

Let this petition of opposition be filed as prayed for and according to law.

New Orleans, Febr'y 25, '80.

(Signed) W. H. ROGERS, *Judge.*

Judgment.

5th District Court for the Parish of Orleans.

STATE OF LOUISIANA *ex rel.* A. V. WOGAN,
v.
THE MECHANICS' — TRADERS' BANK. } No. 9744.

In the matter of the opposition of Forstall's Sons, agents of Baring Bros. & Co., to the tableau of distribution filed by the commissioners herein on the 11th day of February, 1880, and the court considering the law and the evidence and the agreement of compromise entered into by the parties and exhibited to the court, it is ordered, adjudged, and decreed that the opposition of Forstall's Sons, agents of Baring Bros. & Co., to said tableau be maintained so far as to allow five hundred dollars attorneys' fees instead of fifteen

hundred dollars claimed in said opposition, and the sum of
102 seventeen hundred and seventy-two $\frac{85}{100}$ dollars as commissions on $177,285.23 instead of eight thousand eight hundred and sixty-four $\frac{26}{100}$ dollars claimed, and that said two items, amounting to twenty-two hundred and seventy-two $\frac{85}{100}$ dollars, be placed on said tableau and paid as costs.

And it is further ordered, adjudged, and decreed, that the items claimed by opponents, to wit, $10, $700, $67.50, $5, $1.82, $1.68, $5.36, $0.88, $1.64, $9.90, $4.17, $152.16, $16.57, and $140, aggregating the sum of $1,116.68, be placed on said tableau as an ordinary debt and paid *pro rata*.

And it is further ordered, adjudged, and decreed that said opposition in all other respects be, and is hereby, dismissed, and that said tableau as thus amended be approved and homologated and the funds distributed in accordance therewith.

It is further ordered, adjudged, and decreed that all the rights of both the opponent and the bank in liquidation touching
103 the value of 180 missing coupons and any damages resulting from the sale of the bonds of the bank in pledge by said opponents are expressly reserved.

Judgment rendered March 3d, 1880, judgment signed March 9th, 1880.

(Signed) W. H. ROBERTS, *Judge.*

EXHIBIT MARKED No. 10, Filed with Answer 28 July, 1882.

NEW ORLEANS, 23 *Feb'y*, 1880.

In the matter of the account of Baring Bros. & Co. against the Mechanics' & Traders' Bank, it is mutually agreed as follows:

$50 charged for cost of ascertaining value of Von Phul's notes to be stricken off.

$1,906.28, difference of interest, to be stricken off.

$8,864.26, being commission, 5%, on $177,285.23, reduced to 1%, say $1,772.85c.

$1,500 attorneys' fees reduced to $500.

All remaining items on the account to be admitted and the amount admitted to be settled in cash.

104 The only question to be submitted to the court is that of the bank's liability on $5,400, missing coupons on city consolidated bonds.

Messrs. R. H. Browne, attorney for the bank, and W. A. Gordon, attorney for Baring Bros. & Co., will take needful legal steps to carry out the above agreement.

Signed in duplicate.

(Signed) EDM'D J. FORSTALL'S SONS,
Agents for Baring Bros. & Co.

(Signed) L. LA COMBE,
Ch'n Com'rs Mech's' & Traders' B'k, in Liquidation.

Entry at Rules.

Extract from chancery order book, Friday, July 28, 1882.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL & SONS, Agents Baring Bros. & Co. } No. 9977.

Oscar J. Forstall and Ernest L. Forstall, composing the commercial firm of Edm. J. Forstall & Son, defendants herein, by Henry Denis, their solicitor, have this day filed their joint and several answer to the complainants' bill of complaint.

105 *Replication. Filed August 18th*, 1882.

United States Circuit Court, 5th Circuit and East-rn Dist. of La.

MECHANICS' & TRADERS' BANK
vs.
BARING BROS. & Co. } No. 9977.

The replication of Leopold La Combe, Frank M. Hall, and Samuel Stafford, liquidators of the Mechanics' and Traders' Bank, complainants, to the answer of Baring Bros. & Co., through their agents, Edmond J. Forstall's Sons, defendants.

These repliants, saving and reserving unto themselves now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto, says that they will aver, maintain, and prove their said bill of complaint to be true, certain, and sufficient in law to be answered unto, and the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by these repliants—

Without this, that any other matter or thing whatsoever
106 in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are and will be ready to aver, maintain, and prove as this honorable court shall direct, and *honorably* pray as in and by their said bill they have already prayed.

(Signed) W. S. PARKERSON,
Solicitor for Complainants.

Entry at Rules.

Extract from chancery order book, Friday, August 18th, 1882.

MECHANICS' & TRADERS' BANK
vs.
E. J. FORSTALL & SONS, Agents of Baring Brothers & Co. } No. 9977.

The complainants herein, by W. S. Parkerson, its solicitor, has this day filed its replication to the answer of the defendants herein.

Affidavit of Oscar J. Forstall under Agreement of Counsel. Filed November 11th, 1882.

U. S. Circuit Court, Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

107 In pursuance of agreement of counsel in this case, Oscar J. Forstall, one of the firm of E. J. Forstall's Sons, agents of Baring Brothers & Co., of London, England, being duly sworn, deposes & says that all the facts & averments contained in the answer filed in this case and sworn to by Ernest L. Forstall, of said firm of E. J. Forstall's Sons, agents of said Baring Brothers & Co., are true and correct; and deponent further says that the answers made by said Ernest L. Forstall to the interrogatories attached to the bill of complaint herein are true & correct, and deponent now swears also to the truth & correctness of all the averments of said answer and of all the answers to said interrogatories just as he could have done and would have sworn had he been present when said answer was filed, he, said deponent, having been absent from the State of Louisiana at the time that said answer was filed, and it having been agreed by counsel that he would make and file the present
108 affidavit on his return to this city.

New Orleans, 8th November, 1882.

(Signed) OSCAR FORSTALL.

Sworn to and subscribed before me this tenth day of November, A. D. 1882.

[SEAL.] (Signed) G. LE GARDEUR,
Not. Pub.

Motion & Order. Case Fixed.

Extract from the Minutes, November term, 1882.

NEW ORLEANS, FRIDAY, *February 23rd*, 1883.

Court met pursuant to adjournment.

Present: Hon. Don A. Pardee, circuit judge.

MECHANICS' & TRADERS' BANK, in Liq.,
vs.
E. J. FORSTALL & SONS, Agents, &c. } No. 9977.

On motion of Henry Denis and T. J. Semmes, solicitors for defendants, it is ordered that this cause be fixed for hearing on Friday, 2nd March, 1883, at 11 o'clock a. m., and that complainants be notified hereof.

Complainants' & Defendants' Note of Evidence.

Extract from the Minutes of March 29th, 1883.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

109 This cause came on to be heard at this term on the bill, answer, replication, and other proceedings in the cause.

Whereupon the complainants offered the following evidence in support of their bill, to wit:

1st. Testimony of J. A. Blaffer, taken in writing at No. 13 Commercial Place on January 6th, 1883.

2nd. The testimony of Leopold Lacombe and F. M. Hall, taken in writing at No. 13 Commercial Place on January 8th, 1883.

3rd. Protest of the commissioners against the sale of the bonds, signed by L. Lacombe, chairman, and dated New Orleans, May 23d, 1879, and addressed to E. J. Forstall's Sons, agents of Messrs. Baring Bros. & Co., filed herewith and marked as Exhibit "A."

4th. Letter, dated 30 Carondelet street, New Orleans, June 11th, 1879, addressed to liquidators of Mechanics' and Traders' Bank, N. O., and signed by W. Alex. Gordon, filed in these proceedings and marked Exhibit "A."

And the defendants offered the following evidence in support of their answer, viz:

110 1st. The act of pledge annexed to their answer as Exhibit No. 1, and the letter of John H. Ludwigsen, cashier, to E. J. Forstall's Sons, of the 19th of June, 1877, pasted on said act of pledge.

2nd. The record of the suit of E. J. Forstall's Sons against L. La Comb & others, liquidators of the Mechanics' & Traders' Bank, No. 10002 of the fifth district court for the parish of Orleans, as copied and contained in Exhibits Nos. 4, 5, and 6, annexed to the answer of defendants.

3rd. Opposition of E. J. Forstall's Sons, agents of Baring Bros. & Co., to account and tableau of the commissioners in suit of the State *ex rel.* A. V. Wogan *vs.* Mechanics' & Traders' Bank, No. 9744 of fifth district court, parish of Orleans, and the judgment of the court on said opposition as copied in Exhibits Nos. 7, 8, and 9, annexed to the answer of defendants.

4th. The act of compromise, under private signature, dated New Orleans, 23rd February, 1880, attached to the answer of the defendants as Exhibit No. 10.

111 5th. A copy of the order of the fifth district court for the parish of Orleans, rendered on the 19th of May, 1880, authorizing the commissioners, on their own motion, to endorse the bonds to bearer, said copy marked "R."

6th. Three letters of the commissioners to E. J. Forstall's Sons, dated, respectively, the 23rd of May, 1879, the 13th of June, 1879, and the 3rd of July, 1879, marked "Letter 1," "Letter 2," and "Letter 3."

7. The three documents annexed to the depositions of L. Lacomb and Frank M. Hall as Exhibit A[3], Exhibit A[4], and Exhibit A[5], being copy of receipt of dividend for $9,866.66; agreement between the commissioners and E. J. Forstall's sons, under date of the 25th of August, 1879, and receipt of the commissioners, under the same date, of certain collaterals returned to them by said agreement by E. J. Forstall's Sons, agents of Baring Bros. & Co.

8th. Deposition of Samuel Stafford, taken by agreement of counsel.

112 9th. Deposition of Oscar J. Forstall, together with statement of prices of securities sold, and six letters of E. J. Forstall's Sons to S. G. and G. C. Ward, of New York, agents of Baring Bros. & Co., attached to said deposition, taken by agreement of counsel.

10th. Deposition of Ad. Schreiber, taken by agreement of counsel.

11th. Depositions of E. H. Reynes and I. Newman, taken by agreement of counsel.

12. Additional deposition of E. H. Reynes, together with statement annexed thereto, taken by agreement of counsel.

13. Statement of admissions on behalf of defendants, signed by solicitor of complainants and dated on the 28th of March, 1883.

14. The agreement of counsel, under date of the 28th of March, 1883, signed by solicitors of complainants and defendants.

113 15. Consolidated bond of the city of New Orleans for $1,000, dated New Orleans, July 1st, 1853, numbered 2217.

16. The account current of the Mechanics' and Traders' Bank with Baring Bros. & Co., marked "B. B."

17. The copy of the "recapitulation" of the inventory of the assets of the bank, taken by order of court by N. B. Trist, notary, on the 21st April, 1879, marked "Inventory."

18th. Statement of proceeds of sales of real estate furnished by the liquidators, marked "Sales."

And the cause was part-ally argued by the counsel for the parties, respectively, and was continued for further hearing until to-morrow morning at 11 o'clock.

Testimony of J. A. Blaffer, Taken in Writing at No. 13 Commercial

114 *Place on January 6, 1883, and Referred to in the Foregoing Note of Evidence of Complainant and Filed March 29, 1883.*

MECHANICS' & TRADERS' BANK, in Liquidation,

vs.

EDM'D J. FORSTALL'S SONS, Agents Baring Brothers & Co.

Evidence taken Saturday, June 6, 1883.

Mr. J. A. BLAFFER, sworn for plaintiffs and examined by Mr. PARKERSON, says:

Q. Mr. Blaffer, are you the same Mr. Blaffer who was appointed a commissioner of the Mechanics' & Traders' Bank?

A. Yes, sir.

Q. Will you please make a statement about what you know as

to the sale of certain bonds that were pledged to Mess. Forstall as agents of Baring Bros.?

A. Well, I was appointed a commissioner in May—say 1879. There were some rumors current about the street that some consolidated bonds to the extent of some two hundred & seventy-five or eighty thousand dollars pledged by the bank to Mess. Forstall, as agents for Baring Bros., were about to be closed out. I met Mr. Forstall one day in the court where there was a suit
115 pending at the time between Mess. Forstall, as agent for Baring Bros., and the commissioners of the bank for the recovery of some coupons that were missing, and upon that occasion I had a conversation with Mr. Forstall in reference to those rumors that had come to my knowledge—at least, that I had heard of. I asked him whether such would likely be the case; that we hadn't as yet been notified by them and whether they intended to sell us out in that way. Mr. Forstall told me that we would in due time be notified whether they would close out those bonds. Upon my return from court to the office of the bank in company with my brother commissioners I learned that very afternoon that the entire amount of the bonds had been closed out; that is all I know about it—in reference to thattransaction of the sale of those bonds.

Q. Mr. Blaffer, you say that this was on the same day that
116 the suit was pending in court?

A. Yes, sir.

Q. And that you heard casually, on that same day, that Mr. Forstall had promised you that he would notify you that you had been sold out?

A. Yes, sir.

Q. It all happened on that day?

A. Yes, sir; I heard on that day, as well as I had heard previously, that they were about to be sold out. I asked him on the very day in court, and he told me he would notify me.

Q. And he told you that he would notify you, and on that same day you were sold out?

A. Yes, sir; then I heard we were sold out. I don't know the amount of sale. The account will show that. The account will show for itself as to whether it was sold on that same day or not.

Q. What time of the day was it that you heard of it?

A. When we came back from court. I suppose it was between two and three o'clock in the afternoon.

117 Q. Was any demand made upon you as commissioner for the settlement of the Barings' account before the 22nd of May?

A. No, sir.

Q. Do you know that any such demand was ever made?

A. To my knowledge I don't know. I was never notified myself, and I never heard that my brother commissioners were notified.

Q. Why did you ask Mr. Forstall to let you know when these bonds were to be sold?

A. Because I thought that it was too unbusinesslike on their part without any notification whatever to place such an amount of bonds

upon the market, and which I was afraid was about to be done in view of the rumors that I had heard upon that and some days previous.

Cross-examined by Mr. DENIS:

Q. Mr. Blaffer, what is your business, sir?

A. My business—I am a manufacturer of brick and of lumber.

Q. Where is your business place?

118 A. My place of business is the Delachaise brick yard, on Tchoupitoulas street between Amelia and Toucher streets, in the sixth district of this city.

Q. How far is that from Canal St.?

A. About three and one-half miles. My saw-mill is at the foot of Austerlitz street, in the same district, on the river front.

Q. As long as you were one of the three commissioners of this bank, did any of the three give more special attention to the affairs of the liquidation than the other two?

A. Mr. Lacombe was chosen at our first meeting, after our selection by the court, as our chairman, and all communications addressed to us as commissioners were generally referred to him and specially taken charge of by him and referred to the commissioners at our meetings, which were weekly, and daily at times, such as the nature of the business required.

Q. Did Mr. Lacombe take a more active part in the liquidation than the other two?

119 A. Well, I can't say. Well, I should say that he did take a more active part, because the office of the commissioners was at his office, and shortly after the office of the commissioners was at the bank, up to, I think, somewheres about the latter part of 1878. I don't remember the dates. We were about eight or nine months.

That has been some years ago, and I haven't refreshed my memory on these facts. Mr. Lacombe was chairman, and all business connections that were addressed to us were first opened by him and referred to us at our meetings. I am satisfied, however, that no steps were taken in any business matters where we were not first consulted, or where the majority of us three did not take it first under consideration.

Q. Now, when you were appointed a commissioner, was not an account current of Baring Bros. & Co. with the bank referred to you as commissioner by Messrs. Forstalls' Sons, the agents of the Barings?

A. If an account was rendered.

120 Q. Yes or no; or if you don't know, say that you don't know or that you don't recollect.

A. I do not recollect now.

Q. Have you never seen the account current of Baring Bros. and Co. with the bank?

A. Yes, sir; I have seen an account current with the bank.

Q. Where have you seen it?

A. In the office of the commissioners.

Q. How was it there?

A. How was the account current?
Q. How was it there at the office of the commissioners?
A. How was what there?
Q. You say you have seen it at the office of the commissioners?
A. Yes, sir.
Q. How was that account at the office of the commissioners?
A. I presume it was sent to us like any other communication.
Q. Sent by whom?
A. I couldn't tell you by whom it was sent.
Q. When did you see it there first?
A. Well, I couldn't tell you when I saw it first.
Q. Was it long after your appointment?
A. Some time after my appointment.
Q. How long?
A. I couldn't tell you, sir.
Q. Did you examine that account?
A. Have you the account there?
121 Q. No; answer the question. Did you examine the account?
A. I couldn't remember that, sir, now, whether I did or not.
Q. Do you know what the balance struck by that account in favor of the Barings against the bank was?
A. No, sir; I couldn't tell you.
Q. Have you no idea what it was?
A. No, sir; I do not know; I didn't come here this evening at all with my memory refreshed on these subjects. If the papers were in my presence I could tell you.
Q. Therefore you have no idea what the debt of the bank to the Barings as shown by that account was?
A. If you give me the account——
Q. You may afterwards ask for what you want; answer the question first.
A. I couldn't tell you, sir. I haven't refreshed my memory upon that subject. I will state that I am now—that it has been several years since I have resigned my position as commissioner, and it is utterly impossible for me to give you any accurate an-
122 swer to your question. The papers are there to speak for themselves.
Q. Mr. Blaffer, do you remember to have ever entered into an agreement with Mess. Forstall's Sons, as agents of the Barings, in connection with the debt of the bank?
A. As a commissioner?
Q. Yes, sir.
A. Not to my recollection, sir.
Q. You don't remember to have signed any agreement as one of the three commissioners?
A. To what effect?
Q. Any agreement whatever—to any effect? You don't remember to have signed any agreement or compromise with Forstall concerning the debt of the bank to the Barings?

A. If I have the records will show for themselves. I can't recollect the fact.

Q. You do not recollect to have signed any agreement or compromise as one of the three commissioners for the Mess. Forstall?

A. I have to refer you to the records again—I can't tell you.

Q. With your resignation under your eyes, I will ask you how late did you act as one of the three commissioners?

A. Well, I presume I acted up to this time.

123 Q. Up to which time?

A. The 5th day of March, 1880.

Q. You, then, resigned your position on that day?

A. Yes, sir.

Q. What did you resign for? What were your motives—your reasons—for resigning?

A. They are fully set forth here in my resignation.

Q. What did you resign for?

A. Because upon the advice of the attorneys of the bank it became incumbent upon the commissioners to institute a suit for damages against the directors, and as I had been one of those directors of the bank I couldn't assume the position of plaintiff and defendant in the same suit.

Q. Was that suit ever brought against the board of directors?

A. Yes, sir.

Q. What was the claim in that suit against the board of directors, approximatively?

A. It was the amount of the deposits; I think something like one hundred & seventy-five or two hundred thousand dollars—in the neighborhood of two hundred thousand dollars.

124 Q. You had been one of the directors?

A. Yes, sir.

Q. And you are one of the defendants in that suit?

A. Yes, sir.

Q. Is the suit against each one of the directors *in solido* for that amount?

A. I think it is individually and *in solido*—I think so; to the best of my recollection I think it is.

Q. Mr. Blaffer, I wish you would take cognizance of this document, being the original of the agreement dated New Orleans, Feb. 23rd, 1880, and signed in duplicate "Edm'd J. Forstall's Sons, ag'ts for Baring Bros. and Co.; Leopold Lacomb, chairman commissioners Mechanics' and Traders' Bank, in liquidation," which is Exhibit No. 1 annexed to the answer of respondent.

(Document shown witness.)

A. Well, what is your question, Mr. Denis?

Q. This was signed by Mr. Lacombe after a consultation with you and your brother commissioners?

A. Yes, I remember. This is about one of the last things that I did; it is only a few days before I resigned. I remember it fully well.

Q. What is the account of Baring Bros. and Co. referred to
125 in this document? Is it the same that you saw at the office of the bank?

A. I couldn't tell you unless I referred to the papers.

Q. If I showed you a copy of the account will you then remember it?

A. I think that I will.

Q. Is this the document you say you saw at the bank as the account of Baring Bros. & Co. with the bank?

A. That is the account in "pounds."

Q. Now, please look at this account and tell me if you have ever seen this account before. Have you ever seen this account before?

A. This account was rendered to us and we objected to it, but I can't say it was this; that was an account rendered to us by Mr. Forstall, over which there was some misunderstanding, and predicated upon that account there was this agreement made upon the 23rd of February, 1880.

Q. Now, Mr. Blaffer, don't you believe that this is the account itself?

A. It is very probable, sir, that this is the account itself.

NOTE.—The account shown to witness is the account an-
126 nexed to the answer of the defendants in the suit No. 10002 of the late fifth district court of New Orleans, entitled Edm'd J. Forstall's Sons, agents for Baring Bros. and Co., *vs.* Leopold Lacombe, Frank M. Hall and John A. Blaffer, commissioners, etc., which answer and account current are annexed to the answer of respondent in the present suit of the commissioners of the bank against Baring Bros. & Co., No. 9977, United States circuit court, as Exhibit No. 5.

Q. Then, Mr. Blaffer, the account of Baring Bros. and Co. against the Mechanics' and Traders' Bank referred to in this agreement of the 23rd of February, 1880, with Mess. Forstall's Sons, agents of Baring Bros., is the same account which I am exhibiting to you now?

A. To the best of my recollection, I think it is.

Q. Which account shows on the 4th of June, 1879, a final balance in favor of Mess. Baring Bros. and Co. $62,302.40, and which account shows on the 30th of April, 1879, a balance in favor of Mess. Baring Bros. & Co. against the bank $227,267.09.

A. Yes, sir.

127 Redirect examination by Mr. PARKERSON:

Q. How is it that you remember so distinctly all about your conversation with Mr. Forstall in regard to the selling of those bonds and your memory is not so accurate in other matters?

A. For the reason, sir, that I distinctly remember the conversation that I had with Mr. Forstall himself at court, and in order to refresh my memory as to the time and date I referred to the records of the suit that was pending at the time in court where this conversation took place between Mr. Forstall & myself, and I remember

the time of the day; when we came to the office of the bank we learned that at the last "board" our bonds had been sold out.

(Signed) J. A. BLAFFER.

Sworn to and subscribed before me this 24 day of March, A. D. 1883.

[SEAL] (Signed) N. B. TRIST,
Not. Pub.

128 *Testimony of Leopold Lacombe and T. M. Hall, Taken in Writing at No.* 13 *Commercial Place on January* 8, 1883, *and Referred to in the Complainants' Note of Evidence and Offered by Complainants.*

Mr. L. LACOMBE, sworn on behalf of plaintiffs, says:

By Mr. PARKERSON:

Q. Mr. Lacombe, were you appointed by the 5th district court as one of the commissioners of the Mechanics' and Traders' Bank in liquidation?

A. Yes, sir.

Q. Who were appointed with you at that time?

A. Mr. Hall & Mr. Blaffer had already been appointed to the vacancies made by the resignations of Mr. Lehman and Mr. Lanaux, and which appointment was in their stead.

Q. Were you a commissioner of the Mechanics' and Traders' Bank on the 22nd day of May, 1879?

A. Yes, sir.

Q. What do you know, Mr. Lacombe, about the sale of $280,000.00 city consolidated bonds, $54,000.00 premium bonds, and $2,400.00 State bonds?

A. On the 22nd day of May, after the return of the three commissioners from the 5th district court, we were then in ses-
129 sion at the location of the Mechanics' and Traders' Bank, on Carondelet street, when James Lusk, a party intrested in the bank—a large depositer—came in and told us.

Mr. Denis objects "positively to witness repeating what parties told to him. It is hearsay evidence."

Q. Did you hear that the bonds were being sold?

A. I did hear that they were sold.

Q. It was rumored that they were being sold?

A. Yes, sir.

Q. On what day was that?

A. On the 22nd of May, between the hours of 2 and 3 o'clock in the afternoon.

Q. When you heard this rumor what did you proceed to do—you & your brother commissioners—did you make a protest.

A. We discussed over the matter and the commissioners passed a resolution instructing me to send in a protest to Forstall's Sons protesting against it.

Q. Is this document marked Exhibit "A" a copy of the protest you were instructed to serve upon the Mess. Forstall?

(Witness shown document.)

130 A. Yes, sir; that is a true copy of the protest that I served upon the Mess. Forstall, signed and sent in the next day, the 23rd.

Q. Now, Mr. Lacombe, was any demand ever made upon you for a payment of the bank's indebtedness to Baring Bros. before the 22nd day of May?

A. No, sir;

Q. Is this document, marked Exhibit A, the first demand that was made upon you for the payment of the indebtedness?

(Witness shown Exhibit A by counsel for pl'ffs.)

A. Yes, sir.

Q. Have you always, as a commissioner of the said bank, protested against the sale of the bonds by Mess. Forstall?

A. Always did, sir.

Q. Have you ever made any admission by which you would have precluded yourself from so proceeding?

A. On the contrary, I have always been holding the opinion that the sale of the bonds was illegal. I always told my fellow-commissioners that I believed we could recover, and I always instructed our lawyers to cover that ground as a safeguard for ourselves for any future action that we might desire to take against
131 Baring Bros. or their agents.

Cross-examination by Mr. DENIS:

Q. Mr. Lacombe, what is your profession, sir?

A. I am a commission merchant and ship agent.

Q. Where is your office?

A. No. 194 Common.

Q. Sir?

A. No. 194 Common street.

Q. Between what streets is that?

A. Between Baronne and Carondelet.

Q. When were you appointed commissioner of this bank?

A. Some time in April, 1879. I couldn't say the exact date, sir. I think it was in April, 1879.

Q. When did you qualify?

A. I must have qualified about the middle of April, sir, I think; I can't give you the date. Shortly after I was appointed along with Mr. Hall we qualified.

Q. Have you furnished bond?

A. Yes, sir.

Q. In what amount?

A. $35,000.00.

Q. Who is your bondsman?

A. Jules C. Denis, W. H. Hawlitt, James Lusk, Zuntsan; that's all; that's all, sir.

Q. Were they bound *in solido* on the bond?

A. I don't remember now how that bond was made. It was drawn up before a notary, Mr. Trist, and deposited in the
132 5th district court.

Q. Have the other two commissioners also furnished bond?

A. To the best of my knowledge, Mr. Hall did. I don't know about Mr. Blaffer. I could not tell you. I know that Mr. Hall did.

Q. Have you got a distinct bond from Mr. Hall?

A. Quite a distinct bond, sir.

Q. Now, Mr. Lacombe, please tell us where was the office of the bank when she failed?

A. On Carondelet St., between Common and Gravier.

Q. That is about a block from your own office, isn't it?

A. About a block and a half.

Q. Block and a half?

A. Yes, sir.

Q. Is that the office of the liquidators to-day?

A. Yes, sir.

Q. Was it so for some time after your appointment?

A. It was there about the last days of September. The lease expired on the 1st of October, and we vacated the premises.

Q. The last days of Sept., 1879?

A. Yes, sir.

Q. Where is the office of Mess. Forstall's Sons?

A. It is next door to where the Mechanics' and Traders' Bank was.

Q. That is at the time?

A. Yes, sir; and it is still there.

133 Q. Do you know Mr. Wm. A. Gordon, the lawyer?

A. Yes, sir; I know him very well.

Q. Now, Mr. Lacombe, please try and refresh your memory and be a little certain about it. Do you remember whether Mr. Wm. A. Gordon went to the office of the liquidators in the name of Forstall & Sons, as agents for Baring Bros., and came with the account current of Baring Bros. & Co. against the bank—against the Mechanics' and Traders' Bank—soon after your appointment as liquidator?

A. Mr. Gordon called upon the commissioners on or about the 17th or 18th day of April, 1879—May, I should say—May, 1879. Some of our attorneys were there, and the three commissioners were there. Mr. Gordon came in and handed me this account current of Baring Bros. He handed me a copy of an account current of Baring Bros. and Co. with the Mechanics' and Traders' Bank, which copy of account current is dated London, 30th day of April, 1879, and showing a balance in favor of Baring Bros. of £46,618 17*s.*
134 6*d.* Mr. Gordon handed me this. I took it, looked at it, saw the extent of it, handed it over to my commissioners—cocommissioners—and I remarked to Mr. Gordon that it was rather a lengthy document, and it would take us some time to look into it, particularly as the books of the bank appeared to us that no one knew of them in the bank; that we had been in office only from the 5th day of May, 1879, and we could as yet get no information from the officers — not only Baring Bros. & Co.'s account, but also

Morgan's—and, in fact, putting before Mr. Gordon the truth of the matter, that we were novices in the workings of this bank, just beginning, and that we were not *au fait* with all the matters connected with the bank, and he answered me in the presence of the other commissioners (and also, to the best of my recollection, our attorneys, who were present, Mr. Brown and Mr. Huntington), "Why,
135 take your time about that; we know it is a long document; take your time. I don't expect you to get through this in a day, or in a week." I think that answers your question, Mr. Denis.

Q. Could you tell us exactly what day was that?

A. Well, I cannot; unfortunately, I didn't put it down.

Q. Don't you think it was the 13th of May?

A. I don't think so, sir. I think it was later than that.

By Mr. PARKERSON: The minutes show that?

A. No, sir; the minutes don't show it.

By Mr. DENIS: Mr. Lacombe, when the bank failed you were appointed and qualified, and the assets of the bank turned over into your hands. Can you tell us, approximatively, what was the amount of cash that the bank had—about?

A. Actual cash you mean—money?

A. Yes, cash.

A. Well, I think seventy-nine dollars ($79.00)—well, now, I——

Q. About the approximate amount. When the assets were turned over to you, what was about the amount of funds to the
136 credit of the bank?

A. Well, that is a hard matter for me to say. I can't answer that, sir, unless I look at the copy of the receipts that I gave to the sheriff—that we all gave to the sheriff.

Q. Have you no vague idea what it was?

A. No, sir.

Q. Was it $5,000.00?

A. I believe it was more than that.

Q. Was it $10,000.00?

A. Well, I should think it would be about that.

Q. How many accounts and tableau- of distribution have you declared, Mr. Lacombe?

A. You mean dividends?

A. I mean accounts and tableau- of distribution to go to show the dividends.

A. We have filed two tableaus.

Q. Two accounts and tableaus?

A. Two accounts & tableaus—no; I don't quite understand that question. I will give it to you as I understand it; we have filed two tableaus declaring dividends and an account and second tableau showing the actual expenses to date of filing.

Q. When did you file your first provisonal tableau?

A. Well, it was prior to Aug. 27th—filed Aug. 9th.

137 Q. When did you file the second?

A. Prior to March 5th—Feb. 9th, 1880.

Q. 1880?

A. Yes, sir.

Q. Did you declare any dividends by these two tableaus?
A. Yes, sir.
Q. Have you paid any dividends to Mess. Baring Bros. and Co.?
A. Yes, sir.
Q. Can you tell us how much dividend you have paid them?
A. We have paid them 30% upon the—30% upon $49,886.86.
Q. Upon how much—$49,986.86—you have paid them 30% upon that?
A. Thirty per cent.
Q. What was the amount of the first dividend that you paid them?
A. Well, it would be twenty per cent. upon that.
Q. Then the first dividend was twenty per cent. and the second dividend was ten per cent.?
A. Ten per cent.; yes, sir.
Q. Now, could you tell us, please, whether this is a copy of the receipt that Mess. Forstall, as agents of Baring Bros. & Co., gave you—that is, whether it is a copy of the receipt in your pos-
138 session? This is, so far as you recollect, a copy of the provisional receipt known to have been furnished to you by Mess. Edm. J. Forstall's Sons, as agents of Baring Bros. and Co.?

(Witness shown Exhibit "A[3].)

A. Yes, sir; I will say yes to that question.
Q. And you have their formal receipt in your book of receipts.
A. Yes, sir; I believe I have.
Q. Well, are you not positive?
A. We have paid that amount.
Q. You have paid it?
A. Yes, sir.
Q. And therefore you have a receipt for it?
A. Well, whether this is the original and the only receipt extant or whether we fortunately got a receipt in our dividend book besides that, my memory fails. I can't tell you.
Q. Mr. Lacombe, I wish you would now examine this document. (Witness shown agreement of Feb'y 23rd, 1880, which is annexed as Exhibit No. 10 to the answer of respondents in the case at bar, which document is signed in duplicate—"Edm'd J. Forstall's Sons, agents for Baring Bros. and Co.; L. Lacombe, chairman, commissioners Mechanics' and Traders' Bank, in liquidation.") You know this document?
A. Yes, sir.
139 Q. Is the signature at the bottom your own?
A. Yes, sir.
Q. Now, sir, "in the matter of the account of Baring Bros. and Co. against the Mechanics' and Traders' Bank," this is the beginning of the agreement. What account was meant in this agreement? What account of Baring Bros. and Co. against the Mechanics' and Traders' Bank was meant in this agreement?
A. The account current?
Q. The account current of Baring Bros. & Co. against the bank?

A. Yes, sir—that is, an account current had been presented to us by the Forstalls, as agents of Baring Bros. and Co.

Q. Against the bank?

A. Yes, sir.

Q. Have you got that account in your hands?

A. Yes, sir; I have.

Q. What is the title of that account?

A. "Memorandum account of pledge to Baring Bros. and Co., of London. Mechanics and Traders' Bank of New Orleans, in liquidation, in account current with Edm'd J. Forstall's Sons, agents of Baring Bros. and Co., London." What is the date of that account?

A. 4th of June, 1879.

140 Q. What is the balance struck by that account—in that account?

A. $62,302.40.

Q. To whose credit?

A. To the credit of Edm'd J. Forstall's Sons, agents Baring Bros. & Co., of London.

Q. What is the first item of that account?

A. On the top or credit side the first item is—"April 30th, 1879, to balance of account current rendered, cash, 19th March, £46,618 17*s.* 10*d.*, @ 4.87½ equal to $227,267.09."

Q. Now, Mr. Lacombe, I wish you would look at this document, sir. Please look at this document and state to me whether the signatures of L. Lacombe, Frank M. Hall, and J. A. Blaffer, commissioners, are genuine.

A. Yes, sir; I saw them sign it. (Exhibit A[4] filed now on behalf of respondants.)

Q. Mr. Lacombe, please now look at this receipt, dated New Orleans, Aug. 25th, 1879, signed "L. Lacombe, chairman," and state to me, please, sir, whether that is your signature. (Witness shown Document A[5].)

A. Yes, sir; that is my signature.

Counsel for respondent- offers and now files Exhibit A[5] in evidence.

141 Q. Mr. Lacombe, do you remember anything about a suit brought by Messieurs E. J. Forstall's Sons, as agents for Baring Brothers & Co., in the 5th district court, against you and the other two commissioners, for the sequestration of certain coupons of consolidated bonds of the city of New Orleans? Do you remember anything about that?

A. Oh, yes; I remember that on the very same day our bonds were sold—on the 22nd day of May—there was a rule that was — a rule by agreement that was tried but was put aside, and the case went upon its own merits afterwards before the 5th district court in regard to these missing coupons. A fair trial was given, and the judge decided that we should pay for them.

Q. Do you remember how many coupons were claimed by the plaintiffs in that case?

A. Five hundred and sixty (560).

Q. You recollect that there were one hundred and eighty (180) missing.

A. Yes, sir.

142 Q. Do you remember having returned to Messieurs Forstalls those three hundred and eighty (380) — to them as agents for Baring Bros. and Co., when they were ordered to be returned by the sheriff?

A. By the sheriff? Oh, yes; I remember that; yes, sir.

Q. They had been in possession of the sheriff when the bank was sequestered?

A. Yes, sir; the decree of the court ordered the sheriff; the court did. We turned them over to the sheriff. We didn't order the sheriff, the court did, and we turned them over to him. If my memory serves me aright, we deposited them in the hands of the sheriff.

Q. Was it with your consent that the sheriff turned over to Forstall's Sons, agents, the 380 coupons?

A. Oh, yes, sir; I never objected to it. The commissioners never contested the point that the 380 coupons which were in the hands of the sheriff should be returned to Mess. Forstall's Sons, agents.

143 Q. Mr. Lacombe, I wish you now, sir, to try to recollect very distinctly what took place about the endorsing by you three commissioners of the 280 consolidated bonds of New Orleans, claimed in the suit by you and endorsed by you to bearer under order of court, and as endorsed handed over by you to Mess. Forstall's Sons, as agents of the Mess. Baring. Now, I wish you to tell us as distinctly as you can whether that took place, where it was done, who was present, etc.

A. Well, I know it was long after the sale of the bonds by Baring Bros.; how long, I don't remember; however, it was after the sale of the bonds and after the account presented by Mess. Forstall, as agents of Baring Bros. and Co., that we were called upon as commissioners to endorse those bonds, and a time was appointed of the office of Mess. Edm'd J. Forstall's Sons. The three then commissioners—Mr. Hall, Sam. Stafford, and myself—repaired to Forstall's

144 office and there met Mr. Oscar Forstall, Mr. Gordon, their attorney, and, I believe, Mr. Adolph Schreiber was present, & a notary, whose name I don't remember.

Q. Do you remember whether it was Mr. Abat?

A. Well, I don't know. He was a stranger to me. We proceeded—all three commissioners—to endorse those bonds. I can't say that I signed my name two hundred and eighty times, because, to the best of my recollection, I don't think all the bonds were required to be endorsed. I did not keep any account of them.

Q. How long were you at it?

A. I think we were fully two hours at it, if not more.

Q. If not more?

A. If not more. I think that we went there about eleven o'clock and came away about two.

Q. Then it was about three hours?

A. Yes, sir; it was about that time.

Q. Did you endorse them to bearer?

A. To the best of my recollection—I don't remember. I know that there was something written on them.

Q. Now, Mr. Lacombe, in proportion as these bonds were
145 so endorsed by you commissioners, what did you do with them?

A. As they were endorsed—after they were endorsed?

Q. Yes, sir; after they were endorsed.

A. They were turned over to Mess. Forstall.

Q. You turned them over to the Forstalls?

A. Yes, sir; Mr. Oscar Forstall was there. In proportion as they were being endorsed by the commissioners the commissioners turned them over to the Forstalls.

Q. Mr. Lacombe, tell us the object of endorsing them to bearer?

A. I don't know, sir; I never inquired about the object, sir. We were simply asked to endorse them. I presume they could not be used unless they were endorsed.

Q. Were they not marketable without being endorsed?

A. Yes, sir; we have since *have since* endorsed several bonds of the same nature that have been, I presume, sold and resold, and the parties have came to us at the bank to have them en-
146 dorsed. Witness states positively that the commissioners endorsed such and other bonds of the bank to bearer in order to make them transferable by delivery or, which is the same thing, negotiable. Witness states that the commissioners endorsed the bonds at the office of the Messieurs Forstall, because they were requested by the Messieurs Forstall to do so, the same way they endorsed any bonds at the request of parties holding them. Witness knows that when the commissioners endorsed those bonds to bearers the bonds were payable only to the Mechanics' and Traders' Bank, by reason of the special endorsement of the State auditor. Witness knows that there were other bonds of a similar nature specially endorsed to the bank in the same manner.

Q. Mr. Lacombe, these bonds having been specially endorsed by the State auditor, and being therefore payable only to the
147 bank or its representatives or their order, could the Forstalls have then sold them, without having your endorsement, to bearer—in the market, I mean to say?

A. Well, I should think so, sir.

Q. In the market?

A. Yes, sir, from the very fact that we get—that two or three brokers have at different times came to us after having purchased (as I understood it, for I was particular in asking the question). They have come to us to make those bonds—for our endorsement on those bonds—not those bonds of Forstall's, but I mean for all bonds, & city consolidated bonds, similar to those held by pledge by the Mess. Forstall.

Q. Well, then, you, a commercial man, a merchant, you think that bonds that were payable only to the order of a particular party could be sold in the market without the endorsement of that party just as well as if made payable to bearer?

148 A. Well, it does look very crooked; I admit that no commercial man would think that the matter was correct, nor did I at the time. When an outside bond was presented to me I questioned the right of the holder, as it was made payable to the order of the Mechanics' and Traders' Bank, but the officers of the bank informed us that the bank had parted with it, and it didn't appear on the books of the bank, so the commissioners had no right to question how those bonds got into the possession of the other parties, and the possession showed that they held those bonds *bona fide*. Now, why, what else could you do? Ask brokers, they can tell you more about that than I can. Nevertheless, it is a *part* that those bonds were salable.

Q. Would you yourself, as a merchant, buy in the market from the bearer bonds or paper payable to a particular payee, with- the endorsement of that payee?

149 A. No, sir.

Q. You would not?

A. No, sir.

Q. Well, now, Mr. Lacombe, please tell me how it is that when you commissioners thought that the Messieurs Forstall's Sons, as agents of Mess. Baring Bros., had acted wrongfully and fraudulently (as alleged by you in this suit) in selling these bonds on the 22nd of May, 1879—how is it that you then consented, at their request, to transfer to bearer all those bonds and hand them over to said Mess. Forstalls for purposes of their own?

A. Having our lawyers, we consulted them, sir, before endorsing the bonds, and they advised us that we could endorse those bonds. It was a well-known fact at the time to us commissioners that the bonds had been reported sold, and it was well known to us that they were sold, for that representation was made to us by the Mess. Forstall, through their own account of Barings to ourselves. and our lawyers told us that it would not matter to endorse them;

150 that the fact of our endorsing them did not nullify any action we might hereafter take. For myself, as one of the commissioners, I will frankly admit that I was dubious, and I was very particular in asking our legal talent their advice upon the subject, and they telling us that we could endorse them without any harm to ourselves, or any future action we might take against Forstall, we did, sir; but, as to say that we handed them to Mess. Forstall, I think it is putting it too strongly, for we went to Mess. Forstall's, and we simply went there to write our names. We could never have gone out of that office with one of those bonds; they would have had us arrested by the police officers; therefore the allegation that you make that we handed them back is incorrect, I believe. The commissioners signed the bonds, but they were never handed by the commissioners to Baring Bros. and Co.'s agents.

Q. Mr. Lacombe, tell me now how it is, sir, that the present suit has only been brought so long after the sale of the bonds by

151 Mess. Forstalls, which you consider to have been fraudulent, null, and void?

A. I don't want to flatter any one, nor do I desire to throw any

discredit on any lawyers, but, as I have already stated in some portion of my testimony that I was always very anxious for that suit and I could not get our own lawyers to fully agree with me, we finally found Mr. Parkerson to undertake the suit.

Q. Did your former lawyers refuse to bring it? You need not answer if you don't want to.

A. I must decline to answer that.

Q. Now, sir, was not that suit brought only because by the judgment of the Supreme Court of the United States in the suit of the Southern Bank against the City of New Orleans, decided about a year ago, more or less, the value of these bonds went up from about forty cents on the dollar to their full value of dollar for dollar?

A. I will say, no; that from the time those bonds were
152 sold I always maintained that the Mess. Forstall had no right to sell them in such a summary manner, and that even a year at least after they were sold by instruction of myself (of course, with the consent of the commissioners) under date March 1st, 1880, Singleton and Brown, our attorneys, at the foot of the agreement signed by the Mess. Forstall and the commissioners, dated Aug. 25th, 1879, they even then—the commissioners—made a reservation, which reservation was for the purpose that if at any time we carried out—we wanted to carry out—our original intention of suing the Forstalls for the value of those bonds, we left ourselves open.

Q. Mr. Lacombe, I see by the agreement that you speak of that it is provided in this way: "But the said admission and payment shall in no manner prejudice the right of said commissioners in any claim or demand they may make hereafter for damages against said Baring Bros. and Co. on any account whatsoever."

153 *Q.* Why did you not sooner avail yourselves of this reservation to bring suit for damages against Baring Bros. and Co.?

A. As I have stated already, I don't want to show any flattery for one lawyer, or any discredit upon other lawyers, sir; I can assure you the matter was spoken of time and again.

Q. Mr. Lacombe, this document is dated Aug. 25th, 1879.

A. Yes, sir.

Q. The judgment of the Supreme Court of the United States was rendered some time about March, 1882; therefore nearly two years and a half elapsed between the time when you reserved the right to bring suit for damages and that decision of the Supreme Court of the United States. During those years—two years and a half—have you consulted other lawyers than those in the liquidation for the purpose of bringing this suit?

A. No, sir; I don't know that I have; but you will see by that very document there that you hold in your hand, which is
154 dated, as you stated, Aug. 25th, 1879, you will see that on March 1st, 1880 (if you open that document and look at it you will see) *the* we were then of the same opinion on the 1st of March, 1880, *the* we were on the 25th of August, 1879—that is, nine months afterwards.

Q. During those two years or two years and a half the commissioners never decided to bring a suit for damages?

A. No, sir; never decided.

Q. Don't you think that you could then have found other lawyers to bring suit for you, if you wanted to bring it, if your former lawyers in the liquidation were not willing to do so?

A. I have no doubt of it.

Q. Mr. Lacombe, I wish you would look at this paper, which is dated New Orleans, March 12th, 1880, which is addressed to Mess. Singleton and Brown and E. W. Huntington, attorneys, which is signed "L. Lacombe, Frank M. Hall & Sam Stafford, commissioners," and which reads in this way:

GENTLEMEN: Mr. Jno. A. Blaffer having resigned his position
155 as commissioner of the Mechanics' and Traders' Bank and the resignation being accepted by the court there is no reason that we know of why his official bond should not be cancelled, and you will please take such steps as may be necessary to effect that object.

"Respectfully yours,"

Now, please look at the signatures there and tell me if they are genuine?

A. Yes, sir.

It is admitted by counsel that the letter of resignation of Mr. Blaffer as commissioner to the court is dated the 5th of March, 1880. It is admitted, also, that the order of court accepting the same is dated the 6th of March, 1880. It is also admitted that the bond was cancelled at the time. The date of the cancellation of the bond of Mr. Blaffer is reserved by counsel and will be shown later by the record.

Redirect examination by Mr. PARKERSON:

Q. Well, Mr. Lacombe, you state that you did not make an
156 actual and formal manual delivery of each one of these bonds as you endorsed them, did you?

A. No, sir.

Q. They were in the possession of Mess. Forstall's Sons and Co. when you went there?

A. Yes, sir.

Q. You never took them out of their possession?

A. No, sir.

Q. Was there any special agreement in regard to endorsing those bonds?

A. No, sir.

Q. Or any kind of agreement?

A. No, sir.

Q. Was the order that you obtained for the purpose of endorsing the bonds specially for these bonds or for all bonds?

A. For all bonds.

Q. Did you not consider Mess. Baring Bros. and Co. fully & suffi-

ciently responsible for any claim that you might bring against them on account of the sale of these bonds?

A. Yes, sir.

Q. Suppose that one of these bonds was on the market without the endorsement of the bank, would you buy on- of these particular bonds if it were specially endorsed to the bank?

A. Well, no; I would not like to buy it.

Q. You know that they were bought and sold?

157 A. Yes, sir; I have seen them. As I have stated already, brokers have come to me with them.

Q. You know it has been done?

A. Yes, sir; I do.

Q. Mr. Lacombe, did not your former lawyers advise you to undertake this suit after I had consulted with you in regard to it?

A. Yes, sir.

Q. Was not it upon their advice that I filed this petition?

A. Well, I am certain that one of our lawyers advised the suit strongly after you had talked to us about it—got the points of the case and everything. He told us that the suit was a feasible one. I made the remark, "How is it that the lawyers didn't agree with us long before?"

Q. Well, what did he answer to that?

A. I don't know what he answered. He shrugged his shoulders, I think. I know he would like to get into the case now.

Q. Why? Did he tell you so?

A. Because he thinks it is a very good case.

Q. He told you so?

A. Yes, sir.

158 Q. After I had assembled with you?

A. Yes, sir.

Recross-examination by Mr. DENIS:

Q. Mr. Lacombe, as you have answered the last questions about your former counsel when you refused to answer me, I hope you will answer now. Why was not the suit brought by your former counsel?

A. Well, they were our directors and they didn't advise us to do so. They did not agree with us, as I have stated already. They did not agree with us in bringing the suit.

Q. Why? What reasons did they give not to bring the suit?

A. Don't remember that they gave any reasons, but I do know that since suit has been instituted that they—at least one of them—thinks it is a very good suit.

Q. Which one of them?

Q. Am I obliged to disclose names?

A. Well, you seem willing enough to answer when it suits you and not to do so when it doesn't suit you.

A. I will answer if it has to be done—Mr. Ned Huntington.

159 Q. What did Mess. Singleton and Brown think of the suit?

A. I don't think that I spoke to Mr. Singleton about it. I spoke

to Mr. Brown and Mr. Huntington; they were our lawyers that I consulted the most.

Q. What did Mr. Brown say about this suit?

A. He would generally shrug his shoulders when I spoke to him about it.

Q. What do you mean by shrugging up his shoulders?

A. Well, I don't know; I could not tell you what he meant. It looked to me as though he were throwing discredit—cold water—upon the matter.

Q. Did not he say that it was in violation of former agreements?

A. On the contrary, Mr. Brown was the man that kept us covered—always put in everything. That is his own writing in that March 1st, 1880, reservation; it was written at my suggestion.

Q. Are they still your counsel for purposes of general liquidation of the bank?

—. Yes, sir.

160 Q. Upon what sums did you pay the two dividends to Mess. Baring Bros. and Co.?

A. I have answered that and I will answer it again. I give the amount that we paid upon—$49,333.34. The first dividend was twenty per cent. upon that. The second dividend was ten per cent. upon that.

Q. Now, sir, what is the sum of $49,333.34?

A. How is it arrived at, you mean?

A. Yes. How is it arrived at?

A. The total indebtedness as shown by the account of Baring Bros. through their agents, Mess. Edm'd J. Forstall's Sons, was sixty-two thousand three hundred and two dollars and forty cents ($62,302.40), after deducting several items enumerated in the agreement of the 25th of August, 1879. After deducting these amounts, we arrived at that amount, forty-nine thousand three hundred and thirty-three dollars ($49,333.00).

Q. Now, sir, the balance of sixty-two thousand three hundred and two dollars & forty cents ($62,302.40) was the balance struck by the sales of the securities and certain amounts collected by the Mess. Forstalls?

161 A. Yes, sir.

Q. Sale of securities made—sold on the 22nd of May, 1879?

A. Yes, sir; and collections made prior to that time.

Q. How much cash have you got in hand now, Mr. Lacombe?

A. About eight thousand dollars ($8,000.00).

Q. Can you give me any idea of the total amount of debts of the bank from the beginning?

A. From the beginning?

A. Yes, sir—that is, the amount of the bank's liabilities when you were appointed, when she failed—in other words, approximatively?

A. Well, sir, it would be. First of all, the bank failed on the 19th of March, and I would tell you that we did not get possession until the 3rd day of May. The officers of the bank, as I have already stated, did not know how they stood; that is on record in the bank itself. After we went there we were told that there would be a

balance in the hands of Morgans. It turned out there was no
162 balance. We were told there was a balance of fifteen thousand dollars ($15,000.00) in the hands of A. and M. Heine, and it turned out to be fifteen hundred francs (1,500 fr.).

Q. Will you please tell us the amount of the liabilities of the bank when you presented you- first tableau?

A. I have seen there two hundred & sixty-eight thousand dollars ($268,000.00).

Q. That was outside the debt of the Barings?

A. I beg your pardon, sir, it is included in that.

Q. The debt of the Barings reduced to forty-nine thousand — ($49,000.00)?

A. Yes—no; it does not reduce it; it puts in the Barings for the whole claim—for the whole amount they claim.

Q. That puts in the Barings for sixty-two thousand odd dollars, under the head of contested claims?

A. Yes, sir.

Q. Does this show the assets of the bank in any way?

A. No, sir; that's our tableau showing the liabilities of the bank in which we declared our dividend. We have placed them,
163 as you will notice there, under different headings as individual deposits, transferred deposits, registered claims, and outside claims. We would pay on all at once when we filed this tableau, on all except the outside claim which brought about them—that claim—that agreement of Forstall's with us in cutting down their claim. They were going to file an opposition to this, and we therefore wanted—arranged with them to cut down their other expenses, certain items in their account amounting to the same—thirteen thousand dollars ($13,000.00), I believe; that we deducted from their claim and paid them upon that.

Q. What are your assets to-day, without counting the present suit?

A. Without counting this suit?

Q. Yes.

A. Well, sir, we have another suit against the board of directors.

Q. A suit against the board of directors?

A. Yes, sir.

Q. A suit for damages?

A. Through their liability according to the laws of the State.

164 Q. For maladministration?

A. For maladministration; yes, sir.

Q. What else have you got?

A. We have a suit in the country against Mr. Calhoun, ten thousand dollars ($10,000.00). We have a suit in Barcelona—very good suit—parties here responsible for it.

Q. Beside suits, what assets have you got?

A. We have some paper that might be worth, I suppose, about ten cents or twenty cents upon the dollar; some we have been offered 25c. on the dollar for.

Q. What is the value of that paper?

A. You mean of the whole?

Q. The whole.

A. I could not tell you. There is a piece of property here in the city worth—a note which calls for two thousand dollars ($2,000.00)—Brush Electric Light Co.

(Signed) L. LA COMBE.

Sworn to and subscribed before me this 24th day March, 1883.

[SEAL.] (Sig.) N. B. TRIST.
Not. Pub.

165 FRANK M. HALL, sworn for plaintiff and examined by Mr. PARKERSON, says:

Q. Mr. Hall, you were appointed commissioner of the Mechanics' and Traders' Bank, in liquidation, by the fifth district court?

A. Yes, sir.

Q. You were one of the commissioners with Mr. Lacombe and Mr. Blaffer on the 22nd of May, 1879?

A. Yes, sir.

Q. Was there any demand ever made upon you, as one of the commissioners of the said bank, by the Forstalls, as agents of Baring Bros and Co., for the claim of Baring Bros. against the bank, before the 22nd day of May, 1879?

A. No, sir.

Q. Do you know that any such demand was ever made before that day?

A. No, sir.

Cross-examined by Mr. DENIS:

Q. What is your business, Mr. Hall?

A. I am a ship broker, sir.

Q. Ship broker?

A. Yes, sir.

Q. Where have you got your office?

A. No. 193 Gravier street.

Q. Between what streets is that?

A. Between Carondelet and Baronne.

166 Q. Can you tell us when you qualified as commissioner of the Mechanics' and Traders' Bank?

A. No, sir; I have not got the date.

Q. Can you recollect about what time?

A. Well, sir, I think it was some time in April; I am not positive; I would have to refer to the books.

Q. April—what year?

A. 1879.

Q. Have you furnished a bond?

A. Yes, sir.

Q. For what amount?

A. Thirty-five thousand dollars ($35,000.00).

Q. Who are your securities?

A. R. Herrick, James Hagan, M. J. Farrell, J. C. Denis, and E. J. O'Brien.

Q. Are all those bondsmen good and solvent?

A. I don't know, sir; they were at the time; I don't know what they are now, but I believe so.

Q. Did they make proof at the time of their being worth the amount of the bond?

A. I think so, sir.

Q. Do you know that they did?

A. No; I do not remember.

Q. Do you know where the office of Mess. Forstall's Sons was at the time and is now?

A. Yes, sir.

Q. Where is that?

167 A. On Carondelet between Gravier and Common—river side.

Q. Where was, at the time, the office of the liquidators of the bank?

A. Will you please ask that again.

Q. Where was, at the time you were qualified, the office of the liquidators of the bank?

A. One or two doors from Mess. Forstalls' office.

Q. How long did it remain there?

A. I don't know; for several months; until the lease expired.

Q. Was it until the last day of September?

A. That I couldn't tell you, sir.

Q. Do you know Mr. Wm. A. Gordon, the attorney-at-law?

A. I have met him, sir.

Q. Do you know him personally?

A. Only in business connected with the bank.

Q. Did you ever see Mr. Gordon come to the office of the liquidators with the account current of Baring Bros. and Co. against the Mechanics' and Traders' Bank?

A. I saw him bring an account there at one time.

Q. Can you tell us when it was?

A. No, sir.

Q. Approximatively?

A. No, sir.

Q. Soon after your appointment?

168 A. That I can't tell you, sir?

Q. Have you seen that account current?

A. Yes, sir.

Q. Did you know what was, at the time, the debt of the Mechanics' and Traders' Bank to Baring Bros. and Co.?

A. I don't remember the amount; no, sir.

Q. Do you remember it, approximatively?

A. The amount of the indebtedness?

Q. Yes, sir.

A. No, sir.

Q. Could you tell us what was the balance in favor of Baring Bros. and Co. on that account current?

A. I remember they claimed a balance which we didn't acknowledge, and afterwards cut down.

Q. Do you remember what that balance was?

A. No, sir; I do not. I have to refer to amounts and dates—accounts and dates—at least, amounts and dates.

Q. Can you tell us within fifty thousand dollars ($50,000) what was the debt of the bank to Baring Bros. and Co. when you were appointed commissioner?

A. What do you mean—of the total debt or what they claimed?

Q. the total debt of the bank to Baring Bros. and Co. when
169 you were appointed commissioner.

Q. The bank had pledges of Baring Bros. and Co. on which they held securities. If you mean the whole debt it, amounts up in the hundred thousands.

Q. How much?

A. I can't give you the amount of the debt at all. We had too many matters to go over at that time for me to remember two or three years after, but I can refer to papers and books and tell you. I can't give you an amount and then have to correct it.

Q. That's just what I want to know. I want to know whether you have a good memory; whether you looked into this affair particularly, and whether you took such an interest in the affairs of the bank that you looked into them carefully.

A. I would say that at the time I went there every one was present. At every meeting we went into every account and examined all, but as to dates and amounts I can't remember.

170 Q. Do you know or not whether Baring Bros. and Co. were not the largest creditors of the bank?

A. Yes, sir; they were.

Q. Have you, as commissioner, have you three commissioners declared any dividends from the assets of the bank?

A. Yes, sir.

Q. How many tableaus have you presented to the court?

A. Two tableaus declaring dividends.

Q. What dividend did you declare by the first tableau?

A. Twenty per cent.

Q. By the second?

A. Ten.

Q. Have you paid any such dividends to Baring Bros. and Co. through their agents, Mess. Forstall's Sons?

A. Yes, sir.

Q. Well, now, Mr. Hall, I would like you to tell us the amount that you have paid these gentlemen on account of the debt of Baring Bros. & Co. If you find any way here of refreshing your memory I wish you would.

A. We have a secretary who made out all those accounts, and I can only state by his statement.

171 Q. Upon what amount did you pay dividends to Mess. Baring Bros. and Co.?

A. I couldn't tell you, sir. We had two or three hundred depositers, parties we owed money to. I could only swear to that according to the—to our statement or dividend roll. I was a large depositer there myself.

Q. Now, will you please tell me upon what amount you have paid the first dividend?

(Witness shown document A[4].)

—. We have; the sum of forty-nine thousand three hundred & thirty-three dollars and thirty-four cents ($49,333.34).

Q. That is the sum upon which you paid the dividend first of twenty per cent.?

A. Yes, sir.

Q. Now, sir, please tell me what is that sum, $49,333.34.

A. Mess. Forstall's Sons, agents of the Barings, claim in their account against the bank $62,302.40. We contested a certain number of items, reducing this sum to that of $49,333.34, upon which we paid the said dividends.

172 Q. Now, Mr. Hall, will you please tell me what was that balance of $62,302.40 which the Messieurs Barings claimed from you by that account?

A. This is the balance that was claimed by Mess. Forstall's Sons as agent of the Barings after the sale of the securities sold on the 22nd of May, 1879, and various sums collected by them from other securities.

Counsel for respondent offers Exhibit A[6] as part of witness' testimony.

Q. Mr. Hall, I wish you would look at these three papers (papers exhibited to the witness are agreement of the 25th of August, 1879, receipt of the 25th of Aug., 1879, & agreement of the 23d of February, 1880, which have been exhibited to Mr. La Combe before as Exhibits A[4] (c), A[5], & A[6], or Ex. No. 10); look at these documents and see if the signatures affixed to them are genuine.

A. Yes, sir.

173 (Witness recognizes the signatures affixed to these documents as being genuine.)

Q. Now, sir, I want you to tell us about endorsing the bonds which you claim in this suit "to bearer" by the commissioners. Where did that take place?

A. In Mess. Forstall's Sons office.

Q. Do you recollect the day?

A. I do not, sir.

Q. Who was present? Can you tell us that?

A. Yes, sir; Mr. Lacombe, Mr. Stafford, & myself as commissioners; Mr. Schreiber, I think; both of the Forstalls were in the office, but only one of them was near us where we were endorsing the bonds. There was Mr. Oscar Forstall and another gentleman I didn't know; I think he was a notary.

Q. Did you sign the endorsement on the bonds?

A. I signed the bonds.

Q. Tell us the object of your signing these bonds to bearer.

A. I was requested by the chairman to sign those bonds.

174 I objected to it and wanted to consult the attorneys, which I

did in every instance, and they told me that I could go on and sign the bonds. Our chairman looked over these things before they were brought to me. I went there by appointment, I think, about ten or half past ten in the morning to endorse these bonds.

Q. How long did it take—about?

A. I think two or three hours.

Q. Not less?

A. I think not, sir. There were a large number.

Q. Up to that moment the bonds were assigned specially to the bank by the auditor of the State?

A. I had never seen the bonds, sir, up to that moment. We signed other bonds at different times, similar.

Q. Where?

A. In the office of the liquidators.

Q. Whenever you signed those bonds to bearer was it not for the purpose of enabling them to pass from hand to hand?

175 A. I didn't know exactly why we signed them, when we went there. I went there by consent of our attorneys to sign them, as I always thought that we should not do anything unless we were advised by them; and also in the case where we signed these other bonds we had been told that they were payable to the bank, and they wanted us to sign them. They had changed hands two or three times, and I understood we had no record of them at all.

Q. Now, Mr. Hall, I want you to state to me this: How is it that when Mess. Forstall's Sons, as agents of Mess. Baring Bros. and Co., had, on the 22nd day of May, 1879, sold these bonds in a manner which you considered and have declared to have been wrongful and even fraudulent—how is it that by endorsing them payable to bearer

176 you consented to thereby facilitate to those gentlemen the disposition and sale of those bonds which, without that endorsement to bearer, were in their hands unmarketable?

A. Well, this was some time after the bonds were sold that we endorsed them, and we were informed by our attorneys that we could endorse them without in any way harming any claims that we had against Mess. Forstall's Sons.

Q. But yet you were aware that you were doing so for the benefit of Baring Bros. & Co.?

A. We didn't know who had gotten hold of the bonds at that time. I was only asked to go to Forstall's office and sign them. I did not understand that they were in their possession or hands at all.

Q. When you signed in the same manner other bonds of which the negotiability had also been destroyed by special assignment to

177 the bank by the State auditor, did you not do so for the purpose of enabling the holders of said bonds to dispose of them in the market?

A. No, sir; I understand that the bonds had been sold two or three times.

Q. What did you suppose the object of the holders of such bonds could have been in getting from you an endorsement to bearer?

A. Well, I supposed that it was that they had changed handss o many times, and probably those bonds were going to be funded, and they asked the parties to whom they was made payable to endorse them. I understood they had been sold two or three times.

Q. Would you purchase in the market a bond or commercial paper endorsed payable to a particular party without the endorsement of that party?

A. If my broker told me it was all right and customary I would, sir.

Q. If your broker told you it was all right to purchase in
178 the market a bond or special paper payable to the order of a certain party and the order of that party was not on the bond or paper, but your broker told you it was all right, you would buy it?

A. I would buy it on his say so. I wouldn't deal with him if I didn't think he was responsible.

Q. If you had no broker, sir, in the matter?

A. Then I would not do anything unless I had it signed.

Q. You would not accept or purchase such paper without the order of the party to whose order it is made payable?

A. No, sir.

Q. Now, Mr. Hall, in proportion as those bonds in the office of the Mess. Forstall on that day were being endorsed by the commissioners to bearer, what actual disposition was made of them?

A. I don't know, sir. I found the bonds there, signed them, and left them right there. We were asked and advised by our attorneys to go there and sign these bonds. We went there at the ap-
179 pointed time and signed the bonds; found them there and left them there just where we found them.

Q. Did you not know that without an endorsement to bearer these bonds were not marketable?

A. No, sir; I did not.

Q. You were not aware that it was on the very ground that without the endorsement to bearer the bonds were not marketable; that your counsel, in your name, applied to the court for and obtained an order authorizing you to endorse them to bearer?

A. No, sir; I know very little about the city or any of the State official bonds.

Q. Did you know that you were authorized by court to endorse them to bearer?

A. Yes, sir; I never did anything without I had an order from court to do it.

Q. You had an order from court to do it?

A. Yes, sir.

Q. Upon what ground was it to be done?

A. By our attorney.

Q. Did your attorney give you any reason for which you were to endorse those bonds to bearer?

A. I don't remember whether I had any conversation with
180 our attorney or not. Probably I might have done so. I think our chairman talked to him more on the subject than I did.

Q. As commissioner of a bank representing such vast interest and having given such bond as a commissioner, is it possible that you endorsed hundreds of these bonds which you considered the property of the bank to bearer without knowing why you did so?

A. No; I suppose not. I was informed why we were wanted to sign these bonds at the time, and so much so that I objected to signing the bonds until I consulted the attorney.

Q. Well, in fact, you cannot now give me the reason for which you endorsed them to bearer?

A. No, sir; I do not remember exactly.

Q. Don't you know as a merchant that when you endorse commercial paper to bearer that you enable anybody that picks up that paper to represent himself as the owner of it?

A. Yes, sir.

Q. How is it, then, that——

A. I might be able to stop the payment of a bond if we
181 lost it; being payable to bearer makes it payable to anybody.

Q. Well, then, you can't give me any reason at all now?

A. I suppose the bonds, if I remember aright, passed out of our possession and we were asked to endorse them. We hadn't them in our possession, and hadn't anything to do with them.

Q. You consider, then, that you hadn't anything to do with them at the time?

A. Well, sir, at that time we considered we had a claim against Baring Bros. and Co. through Mess. Forstall's Sons & Co. for the sale of these bonds, and when these bonds were sold we protested. We understood they had been sold. I don't know who held them or what, but we were, I understood, to endorse those bonds, and, as I supposed, to make them simply transferable from party to party.

Q. Then, you considered that you had a claim against the Barings for damages?

A. Yes, sir; I did. Our attorney told us we could endorse
182 them without hurting our claim against Baring Bros.

Q. You- claim for what?

Q. What we call a "snap judgment" had been taken.

Q. That was a claim for damages, wasn't it?

A. Yes, sir. We considered the bonds worth a good deal more than what they sold for. I believe at the same time there were other bonds, papers, or securities disposed of.

Q. Now, Mr. Hall, I wish you would tell us how it is that this suit against the Barings was not brought sooner?

A. Because our attorneys didn't advise us. We wanted to bring that suit. I did particularly; always, from the very time the bonds were sold, and our attorneys didn't think it was proper, or that it would be a good suit. I thought it my duty to do it.

Q. Who were those attorneys?

A. Mess. Singleton and Brown and E. W. Huntington.

Q. Well, during those two years and a half you were advised by those attorneys not to bring suit?

A. We had asked them once or twice about it, sir, and
183 finally the way we came to bring the suit was at the suggestion of one of the depositors.

Q. Who was that one?

A. Mr. Van Bergen. He comes here occasionally, but he is, I believe, a resident of Connecticut.

Q. You only consulted these attorneys once or twice during that time?

A. Well, about this particular suit. We consulted them several times on other matters.

Q. And they always told you it was useless to bring it?

A. Well, they never seemed to favor it, sir.

Q. Wasn't it after the famous case of the Southern Bank against The City of New Orleans was decided in the Supreme Court at Washington, and which gave such value to these bonds that you reconsidered the thing, and thought it was well to bring the suit?

A. No, sir. We brought this suit by the request (or demand, you may say) of one of the depositors.

Q. Where is that depositor?

A. I haven't seen him, sir, since we brought the suit.

184 Q. Where does he live?

A. I think — Connecticut. He is down here in the winter, somewhere in the neighborhood of Terrebonne.

Q. Is he the only one of the creditors of the bank that requested you to bring the suit?

A. No, sir; they were all more or less in favor of the suit, but he was the one that was the most persistent.

Q. Is he a large creditor?

A. Somewhere about twenty-seven hundred dollars ($2,700.00). He comes here about once a year and always calls upon me to know what we are doing.

Q. Well, Mr. Hall, the fact that the decision of the Supreme Court of the United States in the case of the Southern Bank gave the value that it did to these bonds had nothing to do whatsoever with the bringing of this suit?

A. No, sir; Mr. Van Bergen came to me first and asked me *what* we were suing Baring Bros., and I told him no. He said he had heard of a decision, as I understood him, in New York,
185 and he thought the case would be a good one. He asked us to let him consult his attorney. I told him we would, and afterwards he brought Mr. Parkerson around to the bank, and we arranged with him to bring the suit, and that is the way the suit was brought,

Q. That is the way the suit was brought?

A. Yes, sir.

Redirect examination by Mr. PARKERSON:

—. Mr. Hall, did you not and do you not now consider that Baring Bros. were good for the amount of these bonds?

A. Yes, sir.

Q. You did at the time you endorsed these bonds?

A. Yes, sir.

Q. Now, you had heard that these bonds had been sold, and consequently you thought they had passed from the hands of Mess. Forstall?

A. Yes, sir.

Q. Had you heard that these bonds had been sold?

A. Oh, yes.

Q. If bonds are sold, when they are sold do they not generally pass through the hands of two or three parties?

186 A. Yes, sir; oh yes.

Q. Was the order that you obtained to endorse the bonds only for these bonds?

A. I cannot say positively unless I read the order. I think it was a general order for all the bonds we had.

Q. Did your attorney tell you that you could endorse these bonds without prejudice to the rights of the bank?

A. Yes, sir. I was more in favor of bringing the suit against Baring Bros.—and thought the sale was wrong—than any of the others.

Q. Did you think and do you think that you had a claim against the Barings for the return of these bonds or their value?

A. Yes, sir.

Q. Now, Mr. Hall, as a commercial man I ask you this question: Supposing $280,000.00 of bonds were placed upon the market on a certain day, and these bonds were all specially endorsed, do you think that they would affect bidders?

A. Yes, sir. You mean that if all these bonds were placed right upon the market?

187 Q. And were specially endorsed to a single person?

A. Yes, sir. I think it would affect the market.

Q. Suppose a bond were offered for sale in the stock exchange by a person, and that the bond was specially endorsed to John Brown, would you bid on that bond?

A. No, sir.

Q. Do you know anything further about the sale of these bonds that would benefit the parties in this case? What did Mr. Forstall tell you about the selling of these bonds?

A. This was the sale of the bonds that he told me anything about it. I told him that the snap judgment had been taken against us, and he told me in a conversation with him that he thought we were going to get an injunction out against them from disposing of the bonds, and so they sold the bonds.

Q. What was your conversation with him?

A. The conversation was in regard to a suit against the bank in regard to coupons. I remarked to Mr. Forstall that I thought

188 we would win that case, and they would most probably have to give up the bonds to us. If they did not they could not dispose of them. Something similar to that; I can't remember the exact words.

Q. Did he promise you that he would notify you?

A. I have no idea that he did, but it is not clear in my mind.

Q. Was it not upon the very day that you had this conversation that the bonds were sold?

A. On the very day.

Q. Do you remember what time you got back from court?

A. I should say about 12 o'clock or half past twelve—middle of the day.

Q. Mr. Forstall told you that it was on account of this conversation that he sold these bonds?

A. Yes, sir.

Q. Which Mr. Forstall?

A. Oscar.

Recross-examination by Mr. DENIS:

Q. Mr. Hall, that conversation with Mr. Oscar Forstall was after the sale of the bonds?

A. I had two conversations. One was in the 5th district court — on the day the bonds were sold. Probably a year after the
189 bonds were sold we got talking upon the subject of selling these bonds, and he then says, "After you ta-ked there I thought you were going to take out an injunction." I told him no; that I was only talking about what we could —, because we never moved in anything except by the advice of our attorneys.

Q. The first conversation you had about the sale of the bonds was in the court?

A. Yes, sir. I- was not in regard to the sale of the bonds. I- was in regard to these coupons.

Q. That conversation was in court, wasn't it?

A. Yes, sir.

Q. Was it when the suit for the missing coupons was being tried?

A. Yes, sir; I think so.

Q. Was it when the suit for the missing coupons was being tried?

A. Yes, sir.

Q. That is the way in which the conversation you allude to took place?

A. Yes, sir. It was one of the suits in which the bank and Baring Bros. & Co. were both interested.

190 Q. When that conversation took place the bonds were already sold?

A. No, sir; they were not sold; they were sold that day.

Q. When did Mr. Forstall promise to give notice?

A. I don't remember that he promised to give me notice; I think so, but I say I am not positive; I am positive I am under that impression, but would not like to say so unless I am positive.

Q. Did you ever show Mr. Forstall any disposition to redeem the pledge?

A. I don't think we had the time or opportunity to do so.

Q. Had you the means of doing so?

A. I don't think we had the means, but I have—I thought we could always arrange in some way with them to see what our collections would be; it was a long time after the failure of the bank that we could get any.

Q. At the time that the bonds were sold by the Mess. Forstall, on the 22nd of May, 1879, what amount of cash did you have in your hands, if you had been willing to redeem the bonds?

A. I couldn't say, sir.

191 Q. About? Approximate.

A. I couldn't approximate.

Q. Well, answer that question.

A. I can't answer it.

Q. Had you about five thousand dollars?

A. I can't answer.

Q. Don't you know that you hadn't ten thousand dollars?

A. No, sir.

Q. Don't you know that you hadn't twenty thousand dollars cash on that day?

A. No, sir.

Q. Don't you know that you hadn't fifty thousand dollars cash on that day?

A. No, sir.

Q. Mr. Hall, you have no idea *whether*, as commissioner, of the amount of cash in you hands about the 22nd of May, 1879?

A. No; as I told you first, Mr. Denis, I don't remember dates; I don't remember the date exactly that we came in possession of the bank.

Q. Mr. Hall, at what time did you commissioners have any cash in your hands for the first time?

A. When we got the bank from the sheriff I got it into my head (whether I am right or not) that we must have received

192 eighteen thousand dollars from the sheriff.

Q. When was that—soon after your appointment?

A. Well, two or three weeks after my appointment; two weeks, I think.

Q. What is the largest amount of cash that you ever had in your hands during the course of the liquidation—about, approximately?

A. I couldn't tell you, sir.

Q. You can't say?

A. No, sir.

Q. Mr. Hall, did you ever as commissioner make any offer to redeem the bonds held by the Barings?

A. No, sir.

Q. Did you ever apply to Mess. Forestalls, their agents, to redeem the bonds?

A. No, sir.

By Mr. PARKERSON: Did you have time in which to redeem the bonds or to make an arrangement about them before they were sold?

A. No, sir; we were surprised—very much surprised; wouldn't believe it when we were told.

Q. Do you think you could have made or attempted to have made any arrangement about the bonds?

A. Yes, sir.

Q. What kind of an arrangement?

193 A. We would have waited to see what state the bank was in, what our assets were, and what we could do in the matter.

Q. Besides redeeming the bonds, is there any way in which you could get them out of the hands of the pledgee?

A. Yes, sir; I might have delayed the sale of them and watched an opportunity to dispose of them to advantage.

Q. Well, is it not sometimes customary to get other persons to carry bonds?

A. Yes, sir.

Q. Would you have attempted to have made any such arrangement?

A. Well, I don't know, sir, whether we would or not.

By Mr. DENIS:

Q. Do you think that any capitalists would have consulted to carry the bonds for an insolvent bank?

A. Not unless they could show a good statement, sir.

Q. Well, all that has been paid to the creditors of this bank is thirty per cent.?

A. Yes, sir.

Q. Have you any other assets independent of this suit with which to pay dividends to the creditors?

194 A. Yes, sir.

Q. What are those assets?

A. We have cash on hand. We have a piece of property yet in Memphis. We have several suits, one of which has been decided in our favor—mortgage notes.

Q. What is the value of the property in Memphis?

A. Six hundred and fifty dollars, $650.00, we are offered to-day for it.

Q. What is the amount of actual cash in your hands?

A. I couldn't tell you, sir.

Q. Approximatively.

A. I couldn't tell you unless I had the books.

Q. I ask you, sir, what cash you have in hand at this moment?

A. I couldn't tell you.

Q. Have you any approximate idea?

A. No, sir.

Q. Have you any remote idea?

A. No, sir. We have not had a meeting this month.

Q. By your last tableau of distribution you have not declared any dividend, have you?

A. We made a third tableau.

Q. You have not declared any dividend by that tableau, have you?

A. No, sir.

Q. When was that filed in court?

195 A. About the time, I think, that Mr. Blaffer resigned.

Q. What was that time?

A. I can't give you the date.

Q. Was it last year?

A. No, sir; I think it was before that. In 1881 I think it was.
Q. By that tableau you declared no dividend?
A. No, sir.
Q. When are you going to present any account?
A. As soon as we can get money enough to make any sort of a dividend. We are in hopes to pay five per cent. if we could have succeeded in winning that mortgage case.

(Signed) FRANK M. HALL.

Sworn to and subscribed before me this 24th day of March, 1883.
[SEAL.] (Signed) N. B. TRIST,
Not. Pub.

Protest of the Commissioners against the Sale of Bonds Signed by L. Lacombe, Chairman, Referred to in Complainant's Note of Evidence and Filed March 29, 1883.

NEW ORLEANS, *May* 23*rd*, 1879.

Mess. E. J. Forstall's Sons, agents of Mess. Baring Bros. & Co., New Orleans.

196 DEAR SIRS: The commissioners of the late Mechanics' & Traders' Bank are informed that at a late hour yesterday (May 22nd) you caused to be sold at the New Orleans Stock Exchange the following securities belonging to the late Mechanics' & Traders' Bank, and held by you as agents of Mess. Baring Bros. & Co., of London, viz:

280, two hundred and eighty, consolidated bonds of the city of New Orleans.

54,000, fifty-four thousand, dollars of premium bonds of the city of New Orleans.

2,400, twenty-four hundred, dollars of bonds of the State of Louisiana.

This sale having been made without notice to the commissioners, I am instructed by them to enter their protest against said sale, reserving all rights belonging to them as liquidators of the late Mechanics' & Traders' Bank.

Yours respectfully,
(Signed) L. LA COMBE, *Ch'm'n.*

197 *Letter Addressed to Liquidators of Mechanics' & Trade-s' Bank, &c., Referred to in Complainant's Note of Evidence and Filed March* 29, 1883.

30 CARONDELET STREET,
NEW ORLEANS, *June* 11*th*, 1879.

To the liquidators of the Mechanics' & Traders' Bank of New Orleans.

GENTLEMEN: Under instructions from Messrs. E. J. Forstall's Sons, agents, I have the honor to present you herewith an account of the disposition of the assets pledged to secure the open credit of Messrs. Baring Bros. & Co., showing a balance due, including "interest accrued thereon and all commissions, costs, and charges attending said

sale," of $62,302.40, for which we make formal demand and request that you will enter in due form on your schedule of liabilities of the bank.

You will please notice that we give you credit for the five hundred and sixty coupons which you hold still for our ac. and which constitute a part of the pledged bonds, and request you to
198 consider this an amicable demand therefor.

Very respectfully your ob't servant,

(Signed) W. ALEX. GORDON.

The act of pledge annexed to their answer as Exhibit No. 1 and the letter of John H. Ludwigsen, cashier, to E. J. Forstall's Sons, of the 19th of June, 1877, pasted on said act of pledge referred to in defendants' note of evidence, is transcribed on folio 57 of this transcript.

The record of the suit of E. J. Forstall's Sons against L. Lacomb & others, liquidators of the Mechanics' & Traders' Bank, No. 10002 of the fifth district court for the parish of Orleans, as copied and contained in Exhibits Nos. 4, 5, and 6, annexed to the answer of defendants, referred to in defendants' note of evidence, is transcribed on folios 77 of this transcript.

Opposition of E. J. Forstall's Sons, agents of Baring Bros.
199 & Co., to account and tableau of the commissioners in suit of State *ex rel.* A. V. Wogan *vs.* Mechanics' & Traders' Bank, No. 9944 of fifth district court, parish of Orleans, and the judgment of the court on said opposition, as copied in Exhibits Nos. 7, 8, and 9, annexed to the answer of defendants, referred to in defendants' note of evidence, is transcribed on folios 99 of this transcript.

The act of compromise, under private signature, dated New Orleans, 23 February, 1880, attached to the answer of the defendants as Exhibit No. 10, referred to in defendants' note of evidence, is transcribed on folios 103 of this transcript.

Order of Court Authorizing the Commissioners to Endorse the Bonds to Bearer, Marked "R" and Offered by Defendants. Filed March 29th, 1883.

Fifth District Court.

THE STATE *ex rel.* A. V. WOGAN
vs.
MECHANICS' & TRADERS' BANK. } No. 9744.

200 On motion of Singleton & Brown and E. W. Huntington, of counsel for the liquidators of the Mechanics' & Traders' Bank, and on suggesting to the court that certain bonds heretofore pledged to the State auditor to secure the circulation of said bank and retransferred to said bank by the said auditor require the endorsement of the representatives of said bank to bearer to make the same current and marketable, and on further showing that certain bonds, the assets of the said bank, are in above-named condition, it is ordered that the commissioners of liquidation of said Mechanics' & Traders' Bank are hereby authorized and empowered to en-

dorse over to bearer such bonds heretofore among the assets of the bank & disposed of according to law.

Filed May 19, '80.

(Signed) F. A. LUMINAIS, *D'y Cl'k.*

201 *Three Letters of the Commissioners to E. J. Forstall's Sons, dated, respectively, the 23d of May, 1879, the 13th of June, 1879, and the 3rd of July, 1879, Marked "Letter 1," "Letter 2," and "Letter 3," Offered in Defendants' Note of Evidence and Filed March 29, 1883.*

"Letter No. 1."

Commissioners of the Mechanics' and Traders' Bank (in Liquidation).

NEW ORLEANS, *May* 23, 1879.

Mess. E. J. Forstall's Sons, agents of Mess. Baring Brothers & Co., New Orleans.

DEAR SIRS: The commissioners of the late Mechanics' & Traders' Bank are informed that at a late hour yesterday (May 22) you caused to be sold at the New Orleans Stock Exchange the following securities belonging to the late Mechanics' & Traders' Bank and held by you as agents of Mess. Baring Brothers & Co., of London, viz:

202 280, two hundred and eighty, consolidated bonds of the city of New Orleans.

54,000, fifty-four thousand, dollars of premium bonds of the city of New Orleans.

2,400, twenty-four hundred, dollars of bonds of the State of Louisiana.

This sale having been made without notice to the commissioners, I am instructed by them to enter their protests against said sales, reserving all rights belonging to them as liquidators of the late Mechanics' & Traders' Bank.

Yours respectfully,

(Signed) L. LA COMBE, *Chairman.*

"Letter No. 2."

Commissioners of the Mechanics' and Traders' Bank (in Liquidation).

NEW ORLEANS, *June* 13, 1879.

W. Alex. Gordon, Esq., No. 30 Carondelet St., New Orleans.

DE-R SIR: Your letter of the 11th inst. has had our careful attention, & in reply beg to say that the commissioners cannot

203 recognize the account current of Mess. E. J. Forstall's Sons, agents of Mess. Baring Brothers & Co., by which they claim as due from the late Mechanics' and Traders' Bank the sum of $62,302.40.

The commissioners claim that the said account is erroneous & contain- charges of an excessive nature which were never contemplated in the original agreement with Mess. Baring Brothers & Co. and are not sanctioned by the act of pledge. They claim that the disposition of the securities held by Mess. Forstall's Sons was made

without notice to them, contrary to the spirit of the pledge, and in a manner detrimental to the interests of the late bank.

In reference to the sales of bonds & notes, the commissioners desire to have you inform them when, to whom, & in what manner said sales were made, and in making this request they specially deny admitting the validity of said sales, and by this again
204 affirm and renew their protest of 23rd May last addressed to Mess. Forstall's Sons.

Yours respectfully,

(Signed) L. LA COMBE.
" FRANK M. HALL.
" J. A. BLAFFER.

"Letter No. 3."

Commissioners of the Mechanics' and Traders' Bank (in Liquidation).

NEW ORLEANS, *July* 3, 1879.

Mess. E. J. Forstall's Sons, agents.

DEAR SIRS: In reference to the account of Mess. Baring Brothers & Co. with the late Mechanics' and Traders' Bank the commissioners find the following items charged to the debit of that account:

Draft of C. Le Baron, de E. Monegal, Barcelona, £1,450 0 0.
" of C. H. Schaeffer, de Roig Garcia & Co., Barcelona, 1,525 0 5.

These drafts being still held by Mess. Baring Brothers & Co., we beg to say that the commissioners do not recognize their
205 items as to the debit of the late bank until the said drafts are returned to them.

Yours resp'y,

(Signed) L. LA COMBE, *Ch'n.*

The three documents annexed to the depositions of L. Lacomb and Frank M. Hall as Exhibit "A[3]," Exhibit "A[4]," and Exhibit "A[5]," being copy of receipt of dividend for $9,866.66, agreement between the commissioners and E. J. Forstall's Sons, under date of the 25th of August, 1879, and receipt of the commissioners, under the same date, of certain collaterals returned to them by said agreement by E. J. Forstall's Sons, agents of Baring Bros. & Co., referred to in defendants' note of evidence, filed March 29th, 1883.

EXHIBIT A[3].

Copy of Receipt of Dividend for $9,866.66.

Received, New Orleans, 27 Aug., 1879, from the commissioners of liquidation of the Mechanics' & Traders' Bank of New Or-
206 leans the sum of nine thousand eight hundred & sixty-six dollars and sixty-six cents, being payment of first dividend on undisputed part of Messrs. Baring Brothers & Co.'s claim, as per ac. rendered.

$9,866.66.

EXHIBIT A[4].

Agreement Between the Commissioners and E. J. Forstall's Sons, under date of the 25th of August, 1879.

Fifth District Court for the Parish of Orleans.

STATE *ex rel.* A. V. WOGAN
vs.
MECHANICS' & TRADERS' BANK. } No. 9744.

In order that there may be no hindrance to the distribution of the funds as proposed by the commissioners of the Mechanics' and Traders' Bank in their provisional tableau filed by them, it is hereby mutually agreed between the commissioners, on the one part, and Mess. Baring Bros. & Co., herein represented by E. J. Forestall's Sons, their agents, on the other part, that the
207 commissioners of said bank (although the claim of Baring Bros. & Co. is placed on the tableau among the contested claims) shall pay twenty per cent. on the sum of $49,333.34, part thereof, just as if it were placed among the registered or admitted claims, but the said admission and payment shall in no manner prejudice the right of said commissioners in any claim or demand they may make hereafter for damages against said Baring Bros. & Co. on any account whatsoever.

It is further understood and agreed that at any time after the opening of the courts in November next Mess. Baring Bros. & Co. shall have the right to submit the disputed items to the court for decision thereon on the account herein filed, and that nothing herein shall be construed as a waiver of the rights of Mess. Baring Bros. & Co., so far as these items are concerned, to oppose the
208 homologation of same, nor shall said acception of said dividend by Baring Bros. & Co. be any waiver of their right to insist upon the validity of the following items of their account, which are not included in the above $49,333.34, to wit:

Commission to ascertain Von Phul note	$50
Attorneys' fees	1,500
5% commission on $177,285.23	8,864 26
Interest	1,906 28
¼ of brokerage on note, Bohn, $4,000	10 00
Disc't Aronstein do. 1,021	1 82
" Dreyfus, 941	1 68
" A. Thomson & Co., 1,271.10	5 36
" A. E. Bosby, 500	88
" F. A. Gonzales, 390	1 64
" E. H. Adams & Co., 2,026.66	9 90
" O. Boisse, 354.66	4 17
T. Morphy, $608.66, sold at 25%	456 50
¼% brokerage on all the above	16 57
1% do. Jones' note, $14,000	140 00
Total	$12,969 06

And the following collaterals are to be returned to the commissioners by Baring Bros. & Co., to wit:

Note of H. Von Phul for $20,000.00.

Draft of C. Le Baron, £1,450.

" C. H. Schaeffer & Co. on Roig, Garcia & Co., £1,523.05.

209 And to subrogate the said commissioners in the case of Hollingsworth & Flowers, $500 & int.

A. Flotte, 1,560.35 & int.

It is further understood that this agreement does not apply to nor comprehend the claim of Baring Bros. & Co. for certain coupons of city consolidated bonds for which suit has been brought, No. 10002 on the docket fifth dis'ct court, parish of Orleans.

Signed in duplicate, New Orleans, Aug. 25th, 1879.

(Signed) L. LA COMBE,
" FRANK M. HALL,
" J. A. BLAFFER,
Commissioners.
EDM. J. FORSTALL'S SONS, *Agents.*

The commissioners will pay the ten per cent. on the $49,333.34 and thirty per cent. on eleven hundred & sixteen $\frac{68}{100}$ dollars additional on the present account filed the 11th day of February, 1880, under the same reservation, excepting *as* so far as modified by the judgment to be entered on opposition now filed.

N. O., March 1, '80.

(Signed) SINGLETON & BROWNE, *Att'ys.*

Document Annexed to the Foregoing Agreement.

NEW ORLEANS, 23 *February*, 1880.

210 In the matter of the account of Baring Bros. & Co. against the Mechanics' & Traders' Bank it is mutually agreed as follows:

$50 charged for cost of ascertaining value of Von Phul's notes to be stricken off.

$1,906.28, difference of interest, to be stricken off.

$8,864.26, being commission, 5%, on $177,285.23, reduced to 1%, say $177,285.04.

$1,500 attorneys' fees reduced to $500.

All remaining items on the account to be admitted, and the amount admitted to be settled in cash.

The only question to be submitted to the court is that of the bank's liability on $5,400 missing coupons on the city consolidated bonds.

Mess. R. S. & Browne, att'y for the bank, and W. A. Gordon, attorney for Baring Bros. & Co., will take needful legal steps to carry out the above agreement.

Signed in duplicate.

(Signed) EDM. J. FORSTALL'S SONS,
Ag'ts for Baring Bros. & Co.

(Signed) L. LA COMBE,
Chairman Com. M. & Traders' B'k, in Liq.

EXHIBIT A[5].

211 *Receipt of the Commissioners, under Date of the 25th August, 1879, of Certain Collaterals Returned to them by said Agreement by E. J. Forstall's Sons, Agents of Baring Bros. & Co., Referred to in Defendants' Note of Evidence.*

Received, New Orleans, August 25, 1879, from Messrs. Edm. J. Forstall's Sons, agents for Messrs. Baring Bros. & Co, London, the following collaterals described in the agreement of this day passed between them & ourselves, to wit:

Note of H. Von Phul, $20,000.00; draft of C. Le Baron for 1,450, and an order on W. Alex. Gordon, Esq., att'y, subrogating us in the case of Hollingsworth & Flower, $500 & int.; A. Flotte, 1,560.35 & int.; also 60 d's' draft of C. H. Schaeffer on Roig, Garcia & Co. for £1,821 12 5, protested.

The draft mentioned in agreement above referred to of C. H. Schaeffer & Co. on Roig, Garcia & Co. for £1,523 0 5 being in Messrs. Baring's hands, Mess. Edm. J. Forstall's Sons hereby agree to instruct Messrs. Baring of the transfer of said draft to us.

(Signed) L. LA COMBE,
Chairman.

212 *Deposition of Mr. Sam'l Stafford, Taken by Agreement, Offered by Defendant- March 29th, 1883.*

Mr. SAM'L STAFFORD, sworn for respondent, says:

By Mr. DENIS:

Q. Mr. Stafford, what is you- first name, sir?
A. Samuel.
Q. Where do you reside?
A. I reside on Claiborne St.
Q. In the city of New Orleans?
A. Yes, sir.
Q. You are one of the three commissioners of the Mechanics' & Traders' Bank?
A. Yes, sir.
Q. When were you appointed?
A. I was appointed, I think, in February, 1880.
Q. February, 1880?
A. Yes, sir; 1880.
Q. Was it to replace Mr. Blaffer?
A. To replace Mr. Blaffer, who resigned.
Q. Do you recollect the exact date of you- appointment? Do you recollect exactly when you qualified?
A. I do not, sir.
Q. You have an office in the city?
A. I make my office with Mr. Lacombe, and where the headquarters of the bank are.
Q. Where is that?
A. No. 194 Common St.

Q. Have you given bond as commissioner?
A. Yes, sir.
Q. What amount?
A. Fifteen thousand dollars ($15,000.00).
213 Q. Who are your bondsmen?
A. Mr. W. E. Seymour, Mr. John Janney, Mr. R. L. Robertson, John S. Adams, and W. H. Murphy.
Q. Have you taken an active part in the liquidation of the bank?
A. Yes, sir.
Q. Can you tell us what was the amount—approximate amount—due by the bank to Baring Bros. and Co., of London, when the bank went into liquidation?
A. The amount that was due Mess. Baring Bros.?
Q. Tell us the approximate amount.
A. No, sir; I cannot.
Q. About; whether it was a large or small sum of money.
A. It was a large sum of money.
Q. Was it over one hundred thousand dollars?
A. Well, I don't know how to answer that question. An amount was agreed upon afterwards which was a great deal less than a hundred thousand dollars.
Q. I want to know what the indebtedness was when the bank failed?
A. I don't know.
Q. Can you tell me whether it was over one hundred thousand dollars?
A. No, sir.
214 Q. Can you tell me how much cash you liquidators had when you qualified?
A. No, sir.
Q. Can you give me an approximate statement of it?
A. Well, I qualified a long time after the others. I was not a commissioner at the time the others were.
Q. When you qualified how much cash had the commissioners in hands?
A. Well, I suppose they had at that time about—it is nothing but guess-work. I am only bringing other things to bear to refresh my memory. I suppose at that time they must have had about thirty thousand dollars. The reason I remember that so distinctly is because at the time I qualified we paid a dividend and it required about that amount to pay it.
Q. Was that the first dividend the commissioners paid?
A. No, sir; the second.
Q. Do you recollect the amount that was paid—how much per cent. it was?
A. Ten per cent., sir.
Q. Can you tell us what the assets of the bank consist in now?
A. Yes, sir.
Q. What are they?
A. The assets of the bank now are some little cash and several lawsuits.

215 Q. A little cash and several lawsuits?
A. Yes, sir.
Q. Now, Mr. Stafford—do you remember, Mr. Stafford, when you paid any dividend to Mess. Baring Bros. and Co., of London?
A. Yes, sir; through E. J. Forstalls.
Q. Mess. E. J. Forstall's Sons, their agents?
A. Yes, sir.
Q. What dividend did you pay to them?
A. The per cent., you mean?
Q. Yes, sir.
A. The same.
Q. The same as you paid to the others?
A. Yes, sir.
Q. Do you recollect upon what sum?
A. To the best of my recollection, in the neighborhood of fifty thousand dollars.
Q. Mr. Stafford, please look at this account current of Mess. Baring Bros. and Co. with the Mechanics' and Traders' Bank of New Orleans, beginning with the item of the sum of $227,267.09 as due Baring Bros. and Co. (witness shown account). You see that the account shows, on the 4th of June, 1879, a balance of $62,302.40 in favor of Mess. Baring Bros. and Co.
A. Yes, sir.
Q. Now please state to me whether the dividend of ten per
216 cent. that you have paid on the sum, as you say, of fifty thousand dollars was not upon this sum of $62,302.40, less certain items of the account that you objected to.
A. I believe so. That was the amount. I will now state that I was appointed commissioner on the 6th of March, 1880.
Q. Now, Mr. Stafford, I see that on the 20th of May, 1880, you, together with the other two commissioners, have endorsed a city consolidated bond to bearer. Please look at your endorsement. (Bond exhibited to witness is No. 2217.)
A. Yes, sir.
Q. Is this one of the bonds sued on in the present suit?
A. Yes, sir.
Q. Mr. Stafford, tell us the object of this endorsement by you three commissioners to bearer.
A. Well, instead of answering that question I have got to explain how I endorsed it. Just previous to the 20th of May I was absent from the city, had been gone probably a week, and on my return the other commissioners informed me that they had, after
217 consultation with our attorneys, been advised by them to endorse these bonds, at the instance of Mess. Forstall's Sons, and they were only waiting for my return to endorse them; so, on that guarantee from them (I do not remember whether I consulted personally with the attorneys or not), I went up with them and endorsed the bonds.
Q. Where was it that you endorsed them—in what office, I mean to say?
A. Forstall's office.

Q. What office, Forstall's Sons?
A. Yes, sir.
Q. Do you recollect whether the two hundred and eighty bonds were so endorsed?
A. Yes, sir.
Q. Was it all done the same day?
A. All done the same day.
Q. How much time did it take?
A. Well, I don't remember; I think——
Q. About.
A. Well, I suppose an hour and a half or two hours, as near as I remember. They were all endorsed at one sitting.
Q. Who was present at the endorsing of those bonds, as far as you can recollect?
218 A. I don't recollect any one being present that I can recall the names — except Mr. Forstall.
Q. Which Mr. Forstall was it?
A. Oscar.
Q. Was there a notary public present?
A. I don't remember, sir.
Q. After the bonds had been endorsed by you what was done with them?
A. We left them there.
Q. Do you recollect whether you made any remark to Mr. Forstall or anybody else on leaving them there?
A. No, sir.
Q. How is it that you left them there?
A. Well they had possession of them before & we had no right to take them away.
Q. What was the object of that endorsement to bearer?
A. To make them negotiable.
Q. To make them negotiable?
A. Yes, sir.
Q. Why did you want to make them negotiable?
—. I didn't want to make them negotiable.
Q. Why did you do it, then?
A. At the advice of our attorneys, stating that it would be no harm to us and it wouldn't effect our rights.
Q. Was it for the purpose of enabling Forstall's Sons to
219 negotiate them in the market—to sell them?
A. Well, now, from my first statement, under the circumstances under which I endorsed those bonds, I had no conversations with Mr. Forstall on the subject. In fact, the bonds were waiting for my return from the country, and my copartners, cocommissioners, had informed me that they had taken all the steps necessary, and I foolishly, I suppose, followed their advice, or rather I took their word about their interview with their attorneys.
Q. But yet you, as one of the three commissioners, in endorsing these bonds to bearer, thereby, as you say yourself, to render them negotiable, you knew that you were enabling Mess. Forstall's Sons to dispose of them?

A. Yes, sir.

Q. And you meant that they should be able to dispose of them in that way?

A. I consented, certainly, by the act of endorsement.

220 Q. You knew that if the bonds wer- not made negotiable by this endorsement they couldn't be sold in the market?

A. Yes, sir.

Q. Do you know, as a merchant, that when papers, notes, or bonds are endorsed payable to the order of a certain person without the endorsement of that person the paper or bond is unmarketable?

A. Yes, sir.

Q. You are a merchant, are you not?

A. Yes, sir.

Q. Now, Mr. Stafford, there is something that I wish you to tell us about. How is it that the present suit against Mess. Baring Bros. & Co. was not brought by you commissioners sooner?

A. Well, simply because our attorneys didn't choose to bring it. In other words, they didn't advise it.

Q. Why did you not then in that case employ other attorneys to do it?

A. Because we employed them and were governed by their advice.

Q. You had confidence in their advice?

A. Yes, sir; certainly.

Q. And they advised you not to bring suit?

A. Yes, sir.

221 Q. Therefore, during those two years previous to the decision of the Supreme Court of the United States in the suit of the Southern Bank against The City of New Orleans, which gave great value to these bonds, you never decided to bring suit against Baring Bros. and Co. for damages?

A. No, sir; never decided to do it.

Q. And you didn't so decide because your attorneys were not in favor of bringing the suit?

A. Yes, sir.

Cross-examined by Mr. PARKERSON:

Q. Mr. Stafford, when you endorsed these bonds did you not understand that you were doing it without prejudice to your rights against Mess. Baring Bros. or any claim that you might have?

A. Certainly.

Q. Did you find the bonds in Mess. Forstall's office?

A. Yes, sir.

Q. You simply endorsed you- name upon them and left them there?

A. And left them there.

Q. Had you heard that these bonds had been sold?

A. No, sir.

222 Q. Did you not know that Mr. Forstall had once sold these bonds?

A. Originally. We knew that they had been sold in the stock exchange.

Q. By Mr. Forstall?

A. Yes, sir.

Q. Did you know that the Forstalls had possession of them as owners at the time you endorsed them?

A. As I understood it.

Q. Did you know it?

A. Well, as near as I could believe. Of course I didn't know that they owned them; that was my understanding.

Q. You always, as a commissioner, reserved the right to bring this suit?

A. Yes, sir; always.

Q. Did you reserve this right by the advice of your attorneys?

A. Yes, sir.

Q. Have you ever in any manner waived your right to bring this suit?

A. No, sir.

Redirect-examination by Mr. DENIS:

Q. Mr. Stafford, you reserved your rights, you say, to bring this suit; don't you mean a suit for damages against Baring Bros. and Co.?

A. I mean a suit for the recovery of the value of the bonds or the bonds themselves.

By Mr. PARKERSON:

223 —. Mr. Stafford, I ask you- opinion as a merchant, supposing a bond payable to the order of the Mechanics' and Traders' Bank were placed upon the market, and the Mechanics' and Traders' Bank had not endorsed that bond, do you think that there would be any bidders for it? Do you think there would be any buyers for it?

A. No, sir; I do not.

(Signed) SAM. STAFFORD.

I, Gustave Le Gardeur, Jr., a notary public in and for the parish of Orleans, State of Louisiana, do hereby certify that this day before me personally appeared Samuel Stafford, of the said parish of Orleans, well known to me, who, being duly sworn by me, deposes and says that his foregoing deposit-ons are the truth, the whole —, and nothing but the truth, and I then caused the said Sam. Stafford to sign his depositions in my presence.

In testimony whereof I have hereunto set my hand and seal of office this 27th day of March, A. D. 1883.

[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

224 *Deposition of Oscar J. Forstall, Together with Statement of Prices of Securities Sold and Six Letters of E. J. Forstall's Sons to S. G. and G. C. Ward, of New York, Agents of Baring Bros. & Co., Attached to said Deposition, Taken by Agreement, Referred to in Defendant's Note of Evidence and Offered by Defendant March 29th*, 1883.

Mr. OSCAR J. FORSTALL, being sworn for respondent, says:

By Mr. DENIS:

Q. Are you a member of E. J. Forstall's Sons?
A. Yes, sir.
Q. Who compose that firm?
A. Ernest L. Forstall and myself, to-day.
Q. Who composed the firm last year—in 1879 up to last year?
A. In 1879 Ernest L. Forstall, Adolph Scheiber, and myself.
Q. Where do you reside?
A. My private residence is No. 122 St. Louis St.
Q. In the city of New Orleans?
A, City of New Orleans.
Q. Are you the agents of Messrs. Baring Bros. & Co., of London?
A. We act for them in this city.
Q. You are their agents in this city?
A. We act as their agents.
Q. Well, are you not their agents?
225 A. Yes. Can I explain that quality?
Q. Yes.
A. We are their agents—that is, we are their regular correspondents here, but we are not agents to act without special powers in certain cases. We have no general powers as agents. There is only one agency in America of that class. We represent their interest. We haven't a general power of attorney.
Q. Mr. Forstall, please look at this act of pledge, which is dated New Orleans, the 11th of March, 1876, which is signed "H. Gally, president; Moses Harris, cashier; Edm'd J. Forstall's Sons, agents." Tell us if those signatures are genuine.

(Witness shown above-described document.)

A. Yes, sir.
Q. This was an act of pledge by the Mechanics' & Traders' Bank to you as agents of Baring Bros. & Co.?
A. Yes, sir; under their authority.
Q. Were the securities described and detailed in this act of pledge deposited in your hands by the bank for account of Messrs. Baring Bros. & Co.?
A. Well, this——
226 Q. Were the securities described in said act of pledge deposited in your hands as agents of Baring Bros. by the bank?
A. Yes, sir.
Q. Have they been in your hands as such until the bank failed?
A. Yes, sir; they were.

Q. Were those securities at times substituted by the bank with your consent for other securities?

A. Yes, sir.

Q. Please explain how that was done.

A. These securities were given to authorize the bank to draw exchange, provided we were, as agents of Messrs. Baring Bros. & Co., holders of collateral to cover that credit. For intance, there was a credit of forty thousand pounds (£40,000); we were to have ample collateral security deposited in our hands by the bank. They deposited bonds and at other times notes. When these notes fell due we gave them the privilege of withdrawing them and substituting others in place of them of an equivalent value, and they were to keep the act of pledge always good and credit always covered by collaterals in our hands, and these collaterals, therefore, when
227 withdrawn, were at once replaced by others of equivalent value, always covered by the same pledge—only the effects were changed.

Q. Now, Mr. Forstall, the bonds sued for in the present suit, when the bank failed, were they in your hands as part of the securities under this act of pledge?

A. Yes, sir.

Q. What was approximatively, as far as you can recollect, the amount of the debt of the bank to Mess. Baring Bros. & Co.?

A. Forty-six thousand (46,000) and some odd hundred pounds—forty-six thousand six hundred and some odd pounds.

Q. Tell us what amount in dollars—about?

A. About two hundred and twenty-seven thousand dollars ($227,000.00).

Q. When the commissioners of the bank were appointed by the court, did you render them the account current of Mess. Baring Bros. & Co. with the bank showing that indebtedness?

A. Yes, sir.

Q. Did they offer to redeem the pledge?

A. No, sir.

Q. Have they paid any portion of that debt except such portion as you yourself received from the proceeds of the sale of the
228 securities and from the dividends declared by the commissioners?

A. No, sir.

Q. Now, sir, have you sold the securities held by you under the pledge?

A. Yes, sir.

Q. Please tell us how you came to sell the bonds sued for in this case on the 22d of May, 1879?

A. Because I was threatened by one of the liquidators that they would sequester the bonds and place them in the hands of the sheriff, in whose integrity I hadn't sufficient confidence to allow me to place that amount of bonds in his hands—bonds which were placed in our hands as security for the debt of the bank, and to establish the balance of the account and the exact value of the bonds; to make

up the account showing the balance due us as ordinary creditors against the assets of the bank.

Q. Were you acting under legal advice in so doing?

A. Yes, sir.

Q. Who was your counsel?

A. Mr. William Alexander Gordon.

Q. Had he been your legal adviser for some time then?

A. Yes, sir.

229 Q. Did you consult him about the legality and the propriety of making that sale on the 22d of May, 1879?

A. Yes, sir.

Q. Did he advise you to make it?

A. He advised me to make it.

Q. How was that sale made?

A. At the board of brokers, on open board.

Q. At what time of the day?

A. At the last call of the day, I think; it is two o'clock in the afternoon.

Q. Is the last call at two o'clock in the afternoon?

A. It was at that time.

Q. Who made the sale for you?

A. Mr. Reynes—Emile Reynes.

Q. Of what firm?

A. Reynes & Villere.

Q. What are they in the city?

A. Stock and bond brokers; they were stock and bond brokers then.

Q. And what?

A. Bond brokers; they were brokers.

Q. What are they now?

A. They have dissolved; the firm has dissolved.

Q. Were they men of respectability in our community?

A. Yes, sir.

Q. Are they honest and do they enjoy good reputation?

A. Yes, sir.

230 Q. Have you had occasion to employ them in commercial transactions?

A. For many years.

Q. Have you always known them to act honorably and promptly?

A. Always.

Q. What instructions did you give Mr. Reynes for the purpose of making that sale?

A. That the bonds should be sold at the highest market value, as we wanted to protect all interests at stake.

Q. What do you mean when you say that you wanted to protect all interests at stake? Do you mean the bank as well as the Barings?

A. The bank as well as the Barings, because I was establishing the balance which we would have against the bank.

Q. Did you positively instruct Mr. Reynes not to sell the bonds, except for their highest market value?

A. I told him to sell them in a manner that they would be able to obtain the highest prices paid, and being paid for these securities in such a manner as to realize the highest bid that could be obtained at the time.

231 Q. Did you give him any other instructions than those?

A. I told him that I would want to buy the same amount of bonds, either these or others, and left him to make the arrangements necessary for that purpose.

Q. Well, then, you authorized him to represent to some party that you would take the bonds back from the hands of the purchasers at an advanced price?

A. I told him that our object was to establish the highest value of these bonds, in order to make our account first, and then to prevent them from being sequestered and going into the hands—into hands in which we had no confidence, for the security of all parties concerned; that I wanted him to sell them in such a way as to bring the highest value for the bonds at the time, and that I would buy them back at an advance, in order that he should be better able to elicit the highest possible offer on that day.

232 Q. When you say that you would buy them back do you mean to say you would do so personally or as agents of Messrs. Baring Bros. & Co.?

A. In my capacity and for the interests I was representing.

Q. As agents of Baring Bros. & Co.?

A. Yes, sir.

Q. Mr. Forstall, what reasons had you to think that the sheriff was not a safe depositary of such a large amount of bonds?

A. History teaches us that every one of the sheriffs almost have been defaulters.

Q. Mr. Forstall, was that sale of the 22d of May, 1879, made by you in perfect good faith, as you understand it, for the interests of both the pledgor and the pledgees in this case?

A. Yes, sir.

Q. You meant and intended to serve both interests?

A. Undoubtedly, sir.

Q. Mr. Forstall, I wish you would look at this document, dated New Orleans, 25th August, 1879, signed "L. Lacombe, Frank M. Hall, J. A. Blaffer, commissioners, Edm'd J. Forstall's Sons, agents, marked on the back Exhibit A[4]," and state to us if you have seen it before, and if the signatures are genuine.

233 (Witness shown above-described document and examines same.)

A. Yes, sir.

Q. Who signed Edm'd J. Forstall's Sons, agents?

A. Myself.

Q. Now, sir, please look at this document, dated New Orleans, 23d February, 1880, signed by Edm'd J. Forstall's Sons, agents for Baring Bros. & Co., L. Lacombe, chairman, commissioners Mechanics' and Traders' Bank, in liquidation, marked on the back Exhibit No.

10, and below Exhibit A 6, and tell us if you have seen that document before and if the signatures are genuine.

(Document exhibited to witness.)

A. Yes, sir.

Q. Who signed Edm'd J. Forstall's Sons there?

A. Mr. Adolphe Schrieber.

Q. The former member of your firm?

A. Yes, sir.

Q. Was he then a member of your firm?

A. Yes, sir.

Q. Now, Mr. Forstall, that account says: "In the matter of the account of Baring Bros. and Co. against the Mechanics' and Traders' Bank;" the account therein alluded to is that which shows a balance on the 4th of June, 1879, sixty-two thousand three hun-
234 dred and two dollars and forty cents ($62,302.40) in favor of Mess. Baring Bros. and Co.?

A. Yes, sir.

Q. Mr. Forstall, I see by that account that besides the bonds claimed in the present suit you have sold other securities under the act of pledge. Have the commissioners ever complained to you of the fact that you had made such other sales?

A. No, sir.

Q. Did you ever give them any notice that you were going to make the sales of other securities?

A. No, sir.

Q. Mr. Forstall, one or two of the commissioners, in giving their testimony in this case, have stated that you have promised them not to sell the bonds without giving them notice of the fact, and that the very same day that you made such promise the bonds were sold, viz., on the 22nd of May, 1879.

A. I never made any such promise, sir.

Q. What have you to say on that point? Please state it to us.

A. Not only I made no promise, but at the court Mr. Hall was told by me that it was very important that I should have these coupons which were missing on certain bonds. The bonds were
235 disputed on that account and in order that I could sell these collaterals and establish our final account, and Mr. Hall remarked, "Well, you are not going to dispose of them"—of these collaterals. I said, "Of course I am." He said, "Well, we are going to enjoin you and sequester them." That is what occurred, and upon that the sale was made, after consultation with our lawyers for the purposes above mentioned. That is the whole thing.

Q. Have you or have you not ever said to any of the commissioners that you would not sell the bonds without giving them notice?

A. No, sir; never did.

Q. After you left the court-house, when you had that conversation with Mr. Hall, please state what you did. What took place in relation to these bonds? Where did you go from the court-house?

A. From the court-house I went to my office, and I called my legal adviser and we consulted.

Q. Were your partners there?

A. My partners were there. I told him what was going to
236 be done according to the threat made by one of the commissioners, and was then told that our pledge gave us perfect right to sell whenever and wherever and in any manner that we wished, and the attorney, Mr. William Alexander Gordon, also told us that if we sold immediately it would be as much to the interest of the Mechanics' and Traders' bank as our own, and not to allow such an amount of securities to go into the hands of the sheriff.

Q. Without that threat of Mr. Hall's, had you intended to sell the bonds that very day?

A. Not that very day, but the following day—that is, soon after I intended to sell them, and I was honestly under the impression that I had that right, and when my legal adviser told me I had I was fully determined to dispose of them in order to establish our final account.

Q. Mr. Forstall, please explain to us how the two hundred & eighty consolidated bonds came to be endorsed to bearer by the commissioners. I want you to state what was done in that
237 respect, what it was done for, and what you in particular did. How did you come to have them endorsed to bearer?

A. When the compromise was made, settling all questions and establishing our account by their sale, these collaterals were entirely our property. In consideration of that settlement by the commissioners we were instructed to realize on a momentary rising of the market. We put them on the market and when we came to deliver them the broker rushed back to us and said, "Well, this can't be made a delivery because they have to be retransferred by the bank to bearer." We went to Mr. Lacombe and showed him the bonds, explaining to him that they were the only ones that could make the transfer, and they were called upon, on the strength of our compromise, to give us the transfer which would enable us to sell these bonds. Mr. Lacombe said, "Well, that's all right; but
238 you know, Oscar, we will have to get the order from court. We always have to get an order from court."

Q. An order from court?

A. Authority from court, and this authority was asked for by their attorney. The order was granted, and these gentlemen signed the bonds.

Q. Then, as I understand you, you put these bonds upon the market; that your broker informed you that he could not sell them without the endorsement to bearer? You then applied to Mr. Lacombe for the endorsement?

A. Yes, sir.

Q. Did you state to him then and there that it was for the purpose of selling them in the market that you called upon him to endorse the bonds to bearer?

A. I told him that we had sold them, and needed this transfer to make the delivery.

Q. Were the two hundred and eighty bonds so transferred?
A. Two hundred and eighty; yes, sir.
Q. Mr. Forstall, the bond I show you now is marked No. 2217. Please state how you are now in possession of this bond.

(Witness shown city consolidated bond No. 2217, issued
239 under the provisions of section 37 of the act of 1852.)

A. When the present suit was brought I mentioned to you the fact of this transfer. You asked me whether I could get one of these bonds, as you would like to see it. I went to my broker and asked him to borrow one.
Q. To borrow?
A. To borrow or to buy a bond of that class for me, as I might require it as evidence in the case.
Q. Was it bought for that purpose by you at the time?
A. It was sent to me either with the option of keeping it or returning it after we would have seen it. Then I made up my mind to purchase it, in order to keep it in our hands as evidence.
Q. Mr. Forstall, was Mr. Abat, the notary who has certified to the endorsement of these bonds, present when the commissioners signed them?
A. Yes, sir.
Q. What was done with the bonds in proportion as they were being endorsed to bearer by the commissioners?
A. Turned over to us; returned to us.
240 Q. Mr. Forstall, the bonds were endorsed to bearer, I see, on the 20th of May, 1880. How long after that did you sell them?
A. Almost immediately.
Q. Will you please look at this paper which is marked on the back Exhibit No. 3 and state whether the bonds were sold as there stated and for the prices as there stated?
A. Well, it is very difficult for me to answer that question.
Q. You could not tell us without referring to your books?
A. I could not without referring to my books.
Q. Will you please look at your books and furnish us a statement of what the bonds sold for, and when they were sold, after the 20th of May, 1880?
A. Yes, sir.

NOTE.—Statement as taken from witness' books will be furnished as part of his testimony.

Q. After the sales you made—you say very soon after the endorsement, delivery of the 20th of May, 1880—have Mess. Baring Bros. and Co. or yourselves retained any interest whatever in those bonds?
241 A. No, sir.
Q. Mr. Forstall, you have spoken of a compromise. Was that compromise in writing?
A. Yes, sir.
Q. Is it any of these agreements that I have submitted to you?

What do you mean by your compromise? You have spoken of a compromise?

A. It is an agreement.

Q. Yous peak of a compromise; are you alluding to the agreements of the 23rd of February, 1880, and of the 25th of August, 1879? Is that what you mean by the compromise?

A. Yes, sir.

Q. Mr. Forstall, from the time the transfer of these bonds to bearer by the commissioners on the 20th of May, 1880, up to the time the present suit was brought, have the commissioners ever made any claim on you, as agent of the Barings, in any manner whatever?

A. No, sir.

Q. Have they ever threatened you with the bringing of any suit for damages or any other purpose against Baring Bros. and Co.?

A. Not seriously.

Q. Have they done so in any other way?

242 A. Once one of them jokingly said so in paying me my dividend.

Q. In paying you the dividend you say that they threatened you with bringing a suit against you. Who did?

A. Mr. Lacombe in several instances said so, but never officially.

Q. What did he say?

A. Well, I was pressing him to pay me the balance of dividend on a judgment that we had there for coupons.

Q. What did he say to you?

A. He says, "Oh, well, you must wait until all these affairs that we have in court are settled." I said, "What affairs?" He said, "Several affairs that we have in New York with some bank or other," and that is about all he ever told me about it.

Q. What do you mean when you say that he didn't threaten you seriously with bringing suit? In what way did he do it?

A. He never officially mentioned anything about the claim to us—about his rights to us. From the beginning of this
243 affair these gentlemen have off and on said that they were reserving their rights, up to that final arrangement, which we all considered final, followed by the transfer of the bonds; then I never heard anything more about it. We all considered this transfer was the end of the whole thing, and that the thing was settled.

Q. Between the day of the transfer to bearer, the 20th of May, 1880, until the present suit was brought, did the commissioners ever say to you that they were going to bring suit against you?

A. No, sir; on the contrary.

Q. Can you tell us the day of the last payment of dividend—the day of the last dividend that you received?

A. No, sir; I couldn't tell you.

Cross-examined by Mr. PARKERSON:

Q. Mr. Forstall, what is your business?

A. General commission merchant.

Q. Did you have authority to sue for the coupons in the suit you filed in the civil district court for Baring Bros.?

244 A. Yes, sir.

Q. You have authority to represent them in all this matter with the Mechanics' and Traders' Bank?

A. Yes, sir.

Q. Mr. Forstall, did you have possession of the bonds the day the commissioners signed them?

A. Yes, sir.

Q. Did you take them out of your office?

A. They had them that day they were signing them.

Q. They were in your office the day they signed these bonds, were they not?

A. My recollection is that they were in my office and in Mr. Lacombe's office.

Q. Didn't they sign all these bonds in your office?

A. I was not all the time in the office. Mr. Abat was the notary having them signed.

Q. Mr. Abat was in your office?

A. He was there.

Q. Why is it, Mr. Forstall, that you didn't ask the commissioners to endorse the bonds before you offered them for sale on the 22nd of May, 1879?

A. Because I never suspected that it was required.

Q. Why did you not notify the commissioners that the bonds were to be sold?

245 A. That the bonds were to be sold?

A. Yes. Why did you not notify them?

A. Because I didn't consider it was necessary. I told them in court that I had a perfect right to sell all the collaterals—not only the bonds, but any others under the act of pledge.

Q. Mr. Forstall, as a commercial man, is it not the business or custom of the pledgees to notify the pledgers when they are about to sell pledged securities—collaterals?

A. Not when they are pledged as these were; it would not, when the thing is pledged. They have the right under their contract.

Q. Is it not the custom to notify the pledgor that the pledgee is about to sell pledged property?

A. No, sir.

Q. Were the bonds negotiable on the 22nd day of May, 1879?

A. Yes, sir; they were negotiable to all that we knew of them, but later on they discovered that that endorsement was necessary to make them negotiable.

Q. Well, on the 22nd of May, 1879, were not these bonds

246 endorsed specially to a certain person?

A. They were endorsed to the bank.

Q. Mr. Forstall, in rendering your account to the commissioners of the bank, you credited the bank with five hundred and sixty coupons, did you not?

A. Credited the bank with what?

Q. Five hundred and sixty coupons,

A. I don't know unless I see the account.

Q. Wasn't it because you had credited them with the five hundred

and sixty coupons, and because you didn't have them at that time that you sued the commissioners of the bank for the coupons?

A. The coupons were deposited for collection in bank and they belonged to these bonds as part of the collaterals placed in our hands, and we claimed the return of the coupons, which the commissioners claimed did not belong to us, as we had parted from them, and we got judgment from the fifth district court for said
247 coupons, but as the coupons were lost and could not be found we had a judgment as an ordinary creditor.

Q. Now, was it not because in rendering your account to the bank you had credited them with five hundred and sixty (560) coupons, wasn't that the reason that you sued for these five hundred and sixty (560) coupons? You do not remember whether you credited the bank with five hundred and sixty (560) of coupons or not, do you, in your account?

A. I couldn't tell you; I haven't the account before me.

Q. Mr. Forstall, this exhibit marked "A," do you know the signatures to that letter?

A. Yes, sir.

Q. You know that signature to that letter?

A. Yes, sir; it is William A. Gordon's.

Q. That was your attorney at that time?

A. Yes, sir.

Q. Now, Mr. Forstall, the account referred to in that letter is that account which showed a balance in favor of Mess. Baring Bros. and Co. of sixty-two thousand odd dollars?

A. Yes, sir.

248 Q. Now, that account, as shown by Mr. Gordon's letter, credits the bank with five hundred and sixty coupons, does it not?

A. If the bank returned us the coupons, which we maintained belonged to the pledge, then the bank would remain owing to Mess. Baring Bros. and Co. a balance, after the sale of all the collaterals we had in our hands, of sixty-two thousand three hundred and two dollars and forty cents ($62,302.40). If they did not return us the coupons that we had placed there on deposit for the purposes of collection, then that amount of sixty-two thousand three hundred and two dollars and forty cents ($62,302.40) would be increased by sixteen thousand eight hundred dollars ($16,800.00), as showing the balance due to Mess. Baring Bros. and Co., and that was the meaning of "to make you credit," supposing that you were going to return us the coupons, but if you did not return us the coupons then you would owe us sixteen thousand eight hundred dollars
249 ($16,800.00) more than sixty-two thousand three hundred and two dollars and forty-cents ($62,302.40).

Q. Then it is a fact that you did give him credit for five hundred and sixty (560) coupons—that's a fact?

A. The fact is that we didn't include it in the balance due, under the supposition that there would be no difficulty in getting back the coupons from these commissioners belonging to these deposits.

Q. But it is a fact that you did credit them with five hundred and sixty (560) coupons, as shown by this letter?

A. We did not credit it on the account. We did not add it to a further claim in the balance shown by our account, because we expected the coupons would be returned to us, and we demanded them amicably; then we instituted the suit for coupons.

Q. This letter written by Mr. Gordon, which shows that you credited the bank for the five hundred and sixty coupons, worth sixteen thousand eight hundred dollars ($16,800.00), was authorized by you?

250 A. This letter means that in presenting our account and showing a balance of sixty-two thousand three hundred and two dollars and forty cents ($62,302.40) we reserved a further claim of sixteen thousand eight hundred dollars ($16,800.00) should the commissioners not return us the coupons which they then held. That was the meaning of this letter.

Q. Well, then, as a matter of fact, in your account you didn't claim from the commissioners of the bank the five hundred and sixty coupons?

A. We did.

Q. In your account? You didn't claim that in your account?

A. We didn't claim them in dollars, but we claimed them in after, reserving the right—claimed them in kind.

Q. The sixteen thousand eight hundred dollars' worth of coupons were not included in the account?

A. Not included in the balance of sixty-two thousand three hundred and two dollars and forty cents ($62,302.40).

Q. Not included in the account which shows a balance of sixty-odd thousand dollars?

251 A. But appearing on the account furnished as a claim against the bank.

Q. Now, Mr. Forstall, as a matter of fact, was not it because the bank did hold these coupons, and because they didn't surrender them, and because it was not included in the account which showed a balance of sixty-two thousand dollars, that you brought suit for the coupons?

A. I brought suit for the coupons because they belonged to us.

Q. Now, Mr. Forstall, did not you take a rule on the commissioners of the bank to show cause on the 22nd day of May why they should not turn over these coupons to you?

A. I couldn't tell you what my legal adviser did.

Q. Well, Mr. Forstall, were you not in court the day these bonds were sold the first time?

A. Yes, sir.

Q. Were not those bonds sold on the 22nd day of May, 1879?

A. As far as I remember; yes, sir.

Q. Do you remember the nature of the business which carried you to court on the 22nd day of May, 1879?

252 A. I couldn't tell exactly what it was; I have been so often to court there.

Q. Who did you meet at court on the 22nd day of May, 1879?

A. I remember meeting Mr. Hall. I don't remember positively any other, but I remember meeting Mr. Hall.

Q. Then, Mr. Forstall, as I understand you, you do not remember that you took a rule on the commissioners to show cause why they should not deliver these coupons to you?

A. I remember that I did take action for these coupons, but I do not remember exactly.

Q. But do you not remember that you took two actions?

A. I could not swear to that.

Q. Do you remember that you were in court on the same day that the bonds were sold? Do you remember that you were in court for any business on the same day that the bonds were sold?

A. Yes, sir.

Q. Do you remember that there was any suit about the possession of these coupons that took you to court on the 22nd day of May, 1879?

A. Yes, sir; I think it was.

253 Q. Now, Mr. Forstall, when did you instruct your broker to sell these bonds?

A. On coming back from court.

Q. That same day?

A. Yes, sir; that same day.

Q. When did you have the consultation with Mr. Gordon?

A. About 12 o'clock.

Q. After you had seen Mr. Gordon you saw your broker?

A. Yes, sir.

Q. Mr. Forstall, did you act in this transaction as the agent of both the bank and Mess. Baring Bros. and Co.?

A. I acted in accordance with the conditions of this pledge.

Q. Is the condition of the pledge that you should act as agent for both parties?

A. Yes, sir. The condition of the pledge is that upon default (my understanding of it)—that upon default the assets placed in our hands would be realized to cover the amount due, and reserving the right of having the deficit against the bank made good, or transferring any surplus beyond our debt, if there was any.

254 Q. Mr. Forstall, when did you hand the account current of Baring Bros. and Co. with the bank to the commissioners of the bank?

A. As soon as I received it; the 13th of the same month, I think.

Q. Was that the date that you received the account?

A. The day or the next day after I received the account.

Q. Did you hand them the original account?

A. The original account.

Q. Or a copy?

A. The original account was presented first.

Q. Did you present it yourself?

A. Mr. Gordon did.

Q. Did your attorney hand this account to the commissioners of the bank, or did you render your account to the attorney on that day?

A. I do not remember the day; as soon as I received it from the other side.

Q. What day was that?

A. Well, I don't remember now. It was the 13th of May, I think.

Q. Do you know positively that he rendered the commissioners that account on that same day?

A. The moment I gave him the account he went to the bank, presented the account, and demanded payment of the bal-
255 ance, and came back to the office and said, "Well, of course, they can't pay it; that's the answer."

Q. Did you render the original account as you received it from London or a copy of that account?

A. We made a copy. We presented the original, and then we made a copy. The copy was left.

Q. Do you remember when the copy was sent to them?

A. I do not.

Q. Mr. Forstall, you said that one of your reasons for selling these bonds was because you had no confidence in the sheriff.

A. One of my reasons for selling the bonds was that. My reason for selling them so suddenly that day was that—my real reasons for selling the bonds was that they were pledged to Mess. Baring Bros. and Co., pledged in good faith, and they were sold in good faith to pay for money that the bank had held and could not pay otherwise than by realizing on the effects that had been deposited in our hands to guarantee that loan.

256 Q. Mr. Forstall, you said that on the same day you determined to sell the bonds you consulted with your attorney and you instructed your broker to sell these bonds?

A. That day?

Q. Yes.

A. We hurried the sale, which would have been made a few days after. We hurried it upon the threat the commissioners made to me that they would take these assets out of our hands, and as these assets were the only guarantee we had for the money that was due to us as representatives of Baring Bros. and Co. we hastened to make use of the right we had and we considered having under the pledge to foreclose these assets.

Q. Then, as I understand you, you sold these bonds so suddenly on this day for the purpose of taking it out of the power of the commissioners to get hold of them in any manner?

A. Not "in any manner," unless they paid us. It was always in their power to get these bonds on paying the amount that they owed us.

257 Q. Well, then, to put it more particularly, you did it for the purpose of preventing them from getting an injunction or sequestration for the purpose of getting hold of these bonds?

A. We hurried the sale for that purpose, but we sold the bonds for the purpose of establishing the exact value of the bonds & in order to establish our account.

Q. Mr. Forstall, why did you intend to buy these bonds back for account of Mess. Baring Bros.?

A. Because we had no time to consult them and we had to save the bonds from what we considered to be a danger to them—these assets.

Q. Mr. Forstall, did you know at the time that the sheriff was not safe?

A. My suppositions were very strong, owing to what his predecessors had done.

Q. But in regard to this particular sheriff, did you know he was not safe?

A. My lawyer had no confidence in him.

Q. Now, Mr. Forstall, did your brokers, at the time they made this sale, make any mention to you of the non-negotiability of these bonds?

A. At that time?

Q. Yes, sir.

258 A. No, sir; they did not.

Q. Mr. Forstall, don't you consider it strange that they should not have made any mention at that time and yet should have done so subsequently when they sold the bonds?

A. They did not know it until they came to deliver the bonds.

Q. How is it they could make the sale on that day?

A. Because they offered them on open board, and they only saw the bonds when they were delivered.

Q. The purchaser took the bonds, did he not?

A. Yes, sir.

Q. How is it the purchaser did not make any objections?

A. I don't think at that time that the purchasers made any objections. It was subsequently that some party buying these bonds found it was necessary.

Q. Well, Mr. Forstall, the only persons who could make these bonds negotiable by endorsing them were the commissioners?

A. Yes, sir.

Q. Did the persons buying at that time make any objections to the bonds not being endorsed?

259 A. They would not have taken them.

Q. They examined them particularly, did they not?

A. They always turned them over and looked at them.

Q. After this sale on the 22nd day of May, 1879, did not the brokers examine these bonds particularly and carefully?

A. I don't know what he did.

Q. Did you not receive a notice from your brokers in regard to some defect in these bonds?

A. I received a notice that these bonds—coupons—were missing; that the coupons, sixteen thousand eight hundred dollars ($16,800.00) were missing.

Q. Now, Mr. Forstall, at the time that you say you went to Mr. Lacombe to get him to endorse these bonds, did not you say in your testimony that you had told him that the bonds had been sold? Where did you sell the bonds, Mr. Forstall, the second time?

A. We told Mr. Lacombe that we were selling these bonds, and that they had to be endorsed.

Q. Well, then, Mr. Forstall, you had found a purchaser for
260 the bonds when you went to Mr. Lacombe and told him that you wanted him to endorse them?

A. There were several purchasers.

Q. But you had found purchasers for them?

A. Yes, sir.

Q. Do you remember any person you sold these bonds to?

A. I could remember—I could tell by looking over my books, but the broker could tell better.

Q. Did you have all these bonds in your possession, in your office, on the day on which they were endorsed by the commissioners?

A. Yes, sir; we had them.

Q. Why did you ask the commissioners to endorse these bonds?

A. Because I could not negotiate them without this transfer.

Q. Then, as I understand you, you *you* had sold the bonds and the purchasers made objection to them because they were not specially endorsed?

A. Yes, sir; they had to be retransferred to bearer.

Q. Now, Mr. Forstall, you say that Mr. Lacombe never
261 threatened you officially as to bringing a suit against you as agent of Baring Bros. for these bonds. How do you know he never threatened you officially?

A. I saw him after this transfer here and the last agreement.

Q. You say he never threatened you officially, seriously?

A. Oh, well, in the beginning he wrote.

Q. Well, at the time he threatened you were not you talking about the bonds? Were not you making a demand upon him to pay you the balance of your dividend?

A. No; I was—we were—talking generally upon the subject.

Q. You have said here that you were pressing Mr. Lacombe, as a commissioner, to pay you the balance of your dividend?

A. When we were going to get it, to know that?

Q. You were pressing him as a commissioner to pay you the balance of your dividend, and at that time, as I understand you, he threatened you, but, as you say, not officially, to bring suit against you for these bonds. Now, what do you mean by saying that he threatened you, but "not officially?"

A. He merely mentioned the fact that he still held us responsible for having sold these bonds.

Q. Well, you were talking to him as a commissioner of
262 the bank?

A. I was asking him merely how the collections were getting on.

Q. You were speaking to him as a commissioner of the bank?

A. To Mr. Lacombe, ship broker.

Q. Well, you could not demand from Mr. Lacombe personally a dividend due you by the bank?

A. Well, I didn't demand it. We were merely speaking about how the liquidation was getting along. We were not on business of that special thing. It was not a formal demand.

Q. You say that after the sale of the bonds in the summer of 1880 they have never told you that they were going to bring this suit?

A. Mr. Lacombe told me that when he signed this transfer that he considered everything was finished.

Q. What day was that?

A. I can't tell you what day.

Q. Did he tell you in your office at that time that he considered the whole thing settled?

A. He told me when I called on him for the transfer, and when the bonds were finished he says to me, "Well, it's all done now; you have no more." I said, No; and he said, "Thank God, it's done; I am glad this business is over." These, as far as I can remember, — his own words.

263 Q. Did he refer to the fact that he had been signing bonds for three hours?

A. No, sir; he was perfectly convinced and honestly believed, as well as we were, that everything had been settled by that last agreement of ours—with us. He thought that the whole thing was settled.

Q. Now, Mr. Forstall, you say that you did not consider that it was your duty to notify the commissioners of the bank that you were about to sell the bonds?

A. No; I did not consider it my duty to do so.

Q. Mr. Forstall, did you not represent the bank as agent?

A. Well, I mean that it was not my duty to notify them. It was not my duty to notify them of it at the time. The- were notified over and over again that these assets would be sold to cover the amount they owed, and that they could not pay otherwise. They had but these assets.

Q. How do you know?

A. Because we asked them.

Q. Did you know how much money was on hand for the liquidation of the affairs of the bank at the time you sold these bonds?

A. No; I didn't know how much money they had.

Q. You did not know that they could not make an arrange-

264 ment about these bonds?

A. They said that they could not.

Q. Did you not represent the bank as agent, Mr. Forstall?

A. No; I did not represent the bank as agent, except when I came to sell these assets. I had to sell them for the best interests of both parties.

Q. And don't you consider it would have been — the best interest of your people and the Mechanics' and Traders' Bank to notify its officers that you were about to sell its bonds to the value of two or three hundred thousand dollars?

A. I don't understand the question.

Q. Supposing that you, as agent of Baring Bros., considered that it was expedient for you to sell five hundred thousand dollars' worth of their property, don't you consider that it would be your duty to notify them that you were about to sell it?

A. Well, they were notified over and over again that these things would be sold to pay this indebtedness.

Q. How did you notify the commissioners that you were going to sell these bonds before the 22nd day of May, 1879?

265 A. I asked for the payment of their account and they could not pay, and by reading the whole act of pledge it says we had the right to do so if they did not pay.

Q. When did you notify them?

A. When the account was presented.

Q. Which account do you mean?

A. The claim of Baring Bros. and Co., and they said they could not pay.

Q. How do you know that, Mr. Forstall?

A. Well, my attorney said so.

Q. Now, Mr. Forstall, after these bonds were sold, on the next day, did you not get a notice of protest from the commissioners of the Mechanics' and Traders' Bank?

A. Yes, sir; I did receive such a notice.

Q. Did they not protest against the sale of these bonds by you as agents of Mess. Baring Bros. and Co., of London?

A. Yes, sir.

(Signed) OSCAR J. FORSTALL.

I, Gustave Le Gardeur, Jr., a notary public in and for the parish of Orleans, State of Louisiana, do hereby certify that this day before me personally appeared Oscar J. Forstall, of the said parish of Orleans, well known to me, who, being duly sworn by me,

266 deposes and says that his foregoing depositions *are* the truth, the whole truth, and nothing but the truth, and I then caused the said Oscar J. Forstall to sign his depositions in my presence.

In testimony whereof I have hereunto set my hand and seal of office this 27th day of March, A. D. 1883.

[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

Statement of Prices of Securities Sold.

According to our books, we sold the bonds as follows:

1880.				
May 21.	$9,000,	@ .37¾		$3,397 50
	41,000,	" .37		15,170 00
" 24.	50,000,	" .38		19,000 00
" 25.	13,000,	" .30		3,900 00
	1,000,	" .30		300 00
" 27.	166,000,	" .37⅞		62,872 50
City consol.	$280,000	6% bonds		$104,640 00

1880.				
May 25.	$2,000	State bonds,	@ .44¾	$895
	400	do.,	" .43½	174
	$2,400			$1,069

1880.

June 3.	$10,000 premium bonds,	@ .32⅞		$3,287 50
	10,000 do.	@ .33¼		3,325 00
	34,000 do.	@ .33⅜		11,262 50
				$17,875 00

(Signed) OSCAR J. FORSTALL.

267 *Six Letters of E. J. Forstall's Sons to S. G. and G. C. Ward, of New York, Agents of Baring Bros. & Co.*

"Letter 1."

NEW ORLEANS, 17 *May*, 1880.

Messrs. S. G. & G. C. Ward, New York.

DEAR SIRS: We have to thank you for your good favor of the 13th inst. & valuable information therein given.

In the matter of the 180 missing coupons, the court rendered its decision this morning. The court says if the coupons were in possession of the liquidators of the Mechanics' & Traders' Bank, it would order same to be surrendered to us; but, as it is apparent said coupons were lost by the bank and never came unto the hands of the liquidators, it could only give judgment against the estate of the bank for face value of said coupons, say $5,400, to be paid in course of liquidation, and, as the bank was insolvent, it could not make this a preferred claim, but place it on the same footing
268 with claims of other or ordinary creditors for such dividends as have or may be paid from realization of the assets of the insolvent institution. So soon as this judgment will have matured by the usual ten days' legal delay, we will, therefore, collect from the liquidation a dividend of 30% on $5,400 ---------- $1,620
And we learn from the liquidators that we may expect another dividend of at least 10%, say ---------- 540

$2,160

We think we might complete the bonds to make same good for a delivery on sale by purchasing 180 coupons, representing $5,400, @ from 50 @ 60c.—say $3,480—and this we would advise you to authorize us to do at once, so as to have all the bonds ready for sale whenever good price for same be offered. To-day we solicited an offer for the 50 bonds we were authorized to sell at .39 & at our discretion, 1 @ 2 points lower, @ .37¾ for $9,000, and at .37, 41,000, which we considered prudent to accept, as we know of several
269 parcels of same class of bonds of round amount, of $40 and $50,000 lots, held at .38; besides, everything concerning our city finances is so very uncertain we consider this price a full one at present.

The board of liquidators just appointed for the settlement of our city debt does not, on the whole, give the satisfaction expected, and

the general public places, so far, little reliance in its ability to successfully overcome the money difficulties to be met in clearing up the financial affairs of the city. A much stronger board might have been created &, in that case, securities of the city would have improved materially. As it is, however, confidence did not revive, as expected, upon the appointment made to form the present board. Still, we may have now & then speculative spurts in our bond market, State & city, and it may be well that you place us in position to take advantage of same, should you decide to realize
270 the other securities we hold for our London friends. In the matter of the Mechanics' & Traders' Bank pledge ac., we telegraph you to-day.

Sold fifty thousand city consols at thirty-seven, which we beg to confirm, as detailed above. The bonds will be delivered to-morrow & proceeds remitted to Messrs. Baring, as instructed.

We are, dear sirs, faithfully yours,

(Signed) EDM. J. FORSTALL'S SONS.

"Letter 2."

Extract.

NEW ORLEANS, *May* 18, 1880.

Messrs. S. G. & G. C. Ward, New York.

DEAR SIRS: Confirming our respects of yesterday, we now beg to acknowledge receipt of your telegrams, to wit:

Telegram received. Go on selling the other fifty with the same discretion as before, & use your discretion with regard to the premiums at about the same price or at a corresponding price.

All which is having our most careful attention. To-day our market for city 6% consols is weak, .36¼ only being bid, but
271 we trust to be able to do as well as with the first lot; city premiums firmer, at .27⅜ bid, .27½ asked, which is considered to be the corresponding price to above quotations for consols. Owing to a formality to be performed, we could not effect the delivery of bonds sold yesterday this day, as we expected. The bonds were originally issued payable to Mechanics' & Traders' Bank, and proper transfer to order of bearer must now be made under the ruling of our stock exchange. This will be attended to at once, the liquidators of the bank or clerk of court certifying to the correctness of the transfer, as required by purchasers of the bonds. This transfer having to be made before a notary public, will take some time, so it will be a day or two before we can receive payment & remit proceeds to our London friends. We will make the needful transfers on all the bonds we hold at once, so as to avoid such delays in future sales. For reason given in ours of yesterday, we
272 would rather incline to selling the premium bonds at present ruling rates.

Regarding the 180 missing coupons we find it difficult to purchase the coupons of the class required. Our broker, however, is still on the lookout for same. He reports to us as follows: "No

coupons of Jan. 7, '77, to be had. Submitted this morning to the bond committee of the N. O. Stock Exchange the following question: Whether a missing coupon of a certain date could be replaced by a coupon of the same denomination of bonds. Their unanimous decision is that the missing coupon must be replaced by a coupon of same denomination and same date or its equivalent in cash."

Should we be unable to purchase coupons as required at a discount in selling the incomplete bonds we would have to submit to a deduction in price of sale of $5,400

In part covered by dividend, declared & collectible, of 30%	$1,620	
Expected further dividend 10%	540	
		2,160
Deficit		$3,240

273 Deficit very nearly covered by difference in price of purchase & price of sale of $50,000 made yesterday; all which we mention for your full information & better guidance in case of need, &c.

We remain, dear sirs, devotedly yours,

(Signed) EDM. J. FORSTALL'- SONS.

From all we can judge at present the tendency is that premiums will near a parity with consols—the former improving or consols dropping—the reasons for difference in value fast disappearing, a great deal, however, to depend upon decisions to de rendered soon in certain cases now pending in our courts.

"Letter 3."

NEW ORLEANS, *May* 19, 1880.

Messrs. S. G. & G. C. Ward, New York.

GENTLEMEN: Referring to our respects of yesterday's date, we append copy of telegrams interchanged to-day, noting that you do not wish to dispose of the premium bonds in our hands at present rates.

The market for these securities is weak & panicky, and from
274 all appearances quotations may go much below now ruling figures. At the close bids are only .26¾.

Respectfully & truly yours,

(Signed) EDM. J. FORSTALL'- SONS.

Copy of Telegrams.

Sent.—Premiums bonds saleable at about twenty-seven; rates unsettled and may decline on unfavorable decision in pending suits. Wire if you think advisable to sell whole or part of premiums on hand.

Received.—Telegram received. Do not sell premiums at present prices.

"Letter 4."

NEW ORLEANS, *May 20th*, 1880.

Messrs. S. G. & G. C. Ward, New York.

DEAR SIRS: With more of your good favors to acknowledge, we now beg to confirm our telegram of this day, as follows:

"Sold fifty thousand city 6% consols, at thirty-eight; premiums declining; twenty-five bid." Our market closed unsettled; for
275 city premium bonds, .25¼ bid, .25⅜ asked, tendency pointing strongly towards a further decline. As we know of large amounts being pressed upon the market at .27½ @ .28, we would have felt inclined to sell, as we were convinced these securities, under existing circumstances, would fall 2 @ 3 points in a short time, and at above figures our friends came out with a profit on purchase price. The operation would have been to sell yesterday and repurchase at .25 @ .24, impression prevailing here that premiums were to drop to 24 and perhaps as low as 22c. This decline in premiums may cause a spirt in consols, pushing them for awhile up to 40c.; in that case we could sell the 180 incomplete bonds, the advance of 3 points from 37c. covering more than actual loss arising from the missing coupons. At 25c. we would not advise pressing sale of the premiums, as later on we may expect another reaction favorable to same; .27½ @ .30 appear to us, however, a full
276 price, and we do not see how they can for a long while go above this last figure under general condition of our city financial condition. In city 6% consols we hear of no other sale than the one effected by us. No quotations given at close, no further bid having been made. We are happy to say that all is now finally closed with liquidators of the Mechanics' & Traders' Bank; the formality of retransferring the bonds to order of bearer is being performed by the liquidators, and they have withdrawn all pretensions and reserves made in various compromises as to their pretended right of action for damages arising from foreclosure of pledge by sale of assets in our hands without previous written notice being given, &c.

In a few days we will collect 30% on our judgment for $5,400, our balance as ordinary creditors for any further dividends being increased to that extent.

Our first sale of 50 bonds was completed by delivery made this day, and proceeds will be remitted to our London friends to-
277 morrow. Our sale of this day of 50 bonds, buyers reserved option of accepting delivery in three days, when proceeds will also go forward as above. We have on pledge ac. collected further from Olympe Boisse $223.95, being balance in full & interest on note due by her to this ac. Will include this in our to-morrow's remittance.

Awaiting your further kind favors, we are, dear sirs, devotedly yours,

(Signed) EDM. J. FORSTALL'S SONS.

"Letter 5."

NEW ORLEANS, *May* 21, 1880.

Messrs. S. G. & G. C. Ward, New York.

DEAR SIRS: Confirming our respects of yesterday's date, we now have the pleasure to acknowledge the receipt of your good favor of the 18th inst. and your telegrams, as follows: "Letter seventeenth and telegrams twentieth received. Buy the coupons and then sell the remaining consols at about previous limits. As regards the premiums we wrote you yesterday to sell at your best judgment
278 and discretion, which we now confirm. Letter eighteenth received. Do whatever seems best to you in either purchasing the coupons or submitting to a reduction in the price as you suggest; all which have our most careful attention. We beg to confirm our telegram of this day, to wit: "Three telegrams received. Sold one hundred and sixty-six thousand city consols at thirty-seven seven-eight-s without coupons, being equivalent to forty and seven-eight-s with all coupons. Premiums depressed, neglected; holding awhile yet under discretion given. We consider this sale very good; the tendency is perhaps a further rise in price, but this was too uncertain to speculate upon." We chanced to meet as purchaser a party holding coupons missing to the bonds, which, though purchased by him some time ago at 20c., he was asking 85c. to us for same. This sale made with clause, "buyer's option five
279 days to receive delivery." On Monday next we will remit proceeds of sale No. 2, and on Thursday next proceeds of sale No. 3, as above made; proceeds sale No. 1 going forward this day. We now remain holding for Messrs. Baring, pledge ac., 14 consol'd city 6% (missing one coupon each) & of an issue commanding lower price than Crossman's issue, as previously explained; these we will endeavor to sell at best possible rate to-morrow; also $2,400 in State 7% consols.

We still hold for disposal at first favorable opportunity the $54,000 in city premiums.

We also hold for collection in course balance note A. E. Bosley, $225 & int.

Balance note F. A. Gonzalez Bro., $290 & int.

Mortgage note G. W. Jones (city property mortg'd), $7,500.

Awaiting you- further kind favors, we are, dear sirs, devotedly yours,

(Signed) EDM. J. FORSTALL'S SONS.

"Letter 6."

NEW ORLEANS, *May* 24, 1880.

Messrs. S. G. & G. C. Ward, New York.

280 DEAR SIRS: We had this pleasure last on the 22d, and have since received your good favor of the 20th inst., contents of which are carefully noted. We now beg to confirm our telegram of this day: "Sold fourteen thousand city consols, Lewis issue, twenty-seven, without coupons; twenty-four hundred State

consols, forty-four and a half." The city consols issued by Lewis, Monroe & Stith are very difficult of sale, not being recognized by our stock exchange, and finding we could not obtain a better bid than 30 from the only speculator willing to deal in them at all we deemed — prudent to accept his offer—same class of bonds not long ago having been sold as low as 20c.

The State consols, we fear, will not improve much, if at all, for some time to come unless, perhaps, momentarily under influence of some speculative corner—too uncertain to count upon. There is a rumor to-day that a petition had been filed in the U. S. court
281 for the appointment of a receiver. If this be granted city securities may advance and give us opportunity to realize the premium bonds we still hold at fair profit upon purchase price. Our market to-day closed:

State 7% consols, nominal, .44½.
City premiums, unsettled, .23½ @ .24.
City consols, Crossman, .40 @ .43½.
" other issues, .30, nominal.

No transaction in Crossman reported, .37⅜ only being bid. We remit to-day proceeds sale No. 2, 50,000 city 6% consols.

We are, dear sirs, faithfully yours,
(Signed) EDM. J. FORSTALL'S SONS.

Deposition of Ad. Schreiber, Taken by Agreement of Counsel.

Mr. ADOLPH SCHREIBER, sworn for respondents, says:

By Mr. DENIS:

Q. Mr. Schreiber, you reside in this city?
A. I do.
Q. You were at one time a partner of Mess. E. J. Forstall's Sons?
—. Yes, sir.
Q. From what time to what time were you so?
A. From 1866 to the latter part of 1880, I think. I retired from the house of the 31st of October, 1880—December, 1880.
282 Q. Mr. Schreiber, I wish you to look at this document. (Document exhibited to witness is the agreement of the 23rd of February, 1880, marked as Exhibit No. 10, annexed to the answer of respondents). Have you seen this paper before?
A. Yes, sir; that is my signature to it.
Q. It is signed by you?
A. Yes, sir.
Q. Mr. Schreiber, I wish you now to tell us what account is referred to in this paper by the words "in the matter of the account of Baring Bros. and Co. against the Mechanics' & Traders' Bank."
A. It could be nothing but the account that was presented to the liquidators of the Mechanics' and Traders' Bank. I don't know on what date.
Q. Is it this account?
A. This may be it, sir; I don't know of any other account that it could refer to.

(Account exhibited to witness is the account styled "Memorandum account of pledge to Mess. Baring Bros. and Co., of London; Mechanics' and Traders' Bank of New Orleans, in liquidation, in account with Edmund J. Forstall's Sons, agents, beginning with
283 the item of two hundred and twenty-seven thousand two hundred and sixty-seven dollars and nine cents ($227,267.09) on the 30th of April, 1879, and showing a balance on the 4th of ——, 1879, of sixty-two thousand three hundred and two dollars and forty cents ($62,302.40), copy of which account is annexed to respondents' answer in the present suit as Exhibit No. 5.)

—. Was this the last agreement between Mess. Forstall's Sons, agents for Baring Bros., and the commissioners of the bank, Mr. Schreiber?

A. I think it was; yes, sir. This was considered to be a final settlement of the various disputes that had arisen between the commissioners of the bank and ourselves of the kind.

Q. After this compromise was any demand ever made of you by the commissioners?

A. None, sir. After this compromise was made the indebt-
284 edness of the bank was fixed in accordance with these various charges agreed upon, and the commissioners went on paying dividends as they agreed. No claim was ever made, and no reference was ever made to any claim.

Q. From the date of that compromise, the 23rd of February, 1880, until the institution of the present suit in the United States circuit court, have any of the commissioners ever spoken to you about bringing the suit against the Barings for damages or for anything else?

A. No, sir; never intimated anything of the kind to me.

Q. Mr. Schreiber, what has become of Mr. William A. Gordon, the lawyer?

A. Mr. Gordon has been suffering from an attack of paralysis for the last two years.

Q. Where is he now?

A. He is residing in Chatawa, Miss.

Q. Have you had any occasion to speak to him within the last year?

A. Yes, sir; immediately after he was attacked. I saw him frequently afterwards.

Q. It was, then, in New Orleans?

A. Yes, sir; it was in New Orleans. He was here last
285 spring, and has been several times here.

Q. Have you been able to form any opinion as to the condition of his mind?

A. Yes, sir.

Q. How is it?

A. Well, his mind is gone. He is unable to fix his mind on anything. He starts out rationally enough, but after a short time wanders. He is not in his mind at all.

Q. Is he attended to in his own family as if he had lost his mind?

A. I think that he is. He is unable to attend to his own business.

Cross-examined by Mr. PARKERSON:

Q. Mr. Schreiber, when property is pledged in kind do you not know that it is the custom in the city to notify the pledgor when the property is about to be sold?

A. No, sir. I have very little acquaintance with anything of the kind. The manner of proceeding with all those who hold pledges is that the property is theirs, and they are free to dispose of it. When the debtor becomes insolvent they consider that the
286 property is theirs. Now, whether they notify the pledgor or act as if they were the proprietors of the property or not I can't say.

Q. Supposing, Mr. Schrieber, that, as the holder of pledge property, you were acting as the agent of the pledgor, would not you consider it your duty to notify your principal before you sold the property?

A. I think that my first duty would be to secure the principal.

Q. If you were acting as agent of the pledgor, would not you consider it your duty to notify him that you were about to sell his property?

A. No, sir; I don't believe I would.

Q. Wouldn't you consider it your duty to notify your principal?

A. I am not a lawyer, Mr. Parkerson, but as a business man I would sell right out. I would consider it my first duty to secure the pledgee, and if I had any reason to suspect that the pledgor was going to take legal proceedings to tie the property up in my hands, I would be very quick about selling.

287 Q. Well, suppose, Mr. Schreiber, that you had in your possession any kind of property belonging to a third person of whom you were agent, and you saw fit to sell that property, would you not consider it your duty to consult with him before you sold it?

A. No, sir; I would consider it my duty to do the best with the property to realize the highest possible price for it. I would consider the position of the debtor very carefully. I would take every precaution in the world to get the full value of the property that I had. I would not think that I was bound to do anything beyond that.

Q. Well, Mr. Schreiber, why was it that you disposed of this property on the 22nd of May, 1879, so hastily?

A. Well, I didn't control that transaction at all; my partner, Mr. Forstall, took charge of that. I suppose he had good reasons for it.

Redirect-examination by Mr. DENIS:

Q. Well, now, Mr. Schreiber, you have been for several years the agent of Mess. Baring Bros. and Co., and, I believe, other cap-
288 italists, have you not *been?*

A. Yes, sir; Mess. Hope and Co.

Q. The Hopes of Amsterdam?

A. Yes, sir.

Q. Do you know, for instance, some of our large capitalists, such as the Mess. Carriere?

A. Yes, sir.

Q. You have been a commercial man for a great many years, have you not?

A. About forty-two years.

Q. You are familiar with the financial business of New Orleans, are you not?

A. Well, yes, sir.

Q. Now, sir, I want you to tell us whether you think it would be possible for an insolvent bank in course of liquidation, with its assets in the hands of commissioners, to borrow such a sum as two hundred thousand dollars for the purpose of paying the debt, pledging therefor some of its assets.

A. I don't think it would be possible, sir.

Q. Do you think that our capitalists would in any case lend money to an insolvent corporation?

A. Well, I have never heard the possibility of the thing suggested.

Q. You have never heard of even the possibility of such a thing suggested?

A. No, sir.

Q. Have you ever known it to be done?

289 A. I have heard of one attempt of an insolvent concern to borrow money—that is, I was asked by the managers of an insolvent concern to make an application to friends in New York or abroad for a loan, and they offered all kinds of securities, but I simply laughed at the proposition. I would not think of it—the idea of an insolvent borrowing money.

Q. You look upon it as something impossible in the money market?

A. Well, I have never heard of it before. It is the first time that I ever heard of such a thing, particularly a corporation that is in liquidation. If the commissioners could have given proper securities they might have obtained time from Mess. Baring Bros. and Co. They might have obtained further indulgence from Mess. Baring Bros. and Co., but that I don't know positively, of course.

(Signed) A. SCHREIBER.

I, Gustave Le Gardeur, Jr., a notary public in and for the
290 parish of Orleans, State of Louisiana, do hereby certify that this day before me personally appeared Adolph Schreiber, of the said parish of Orleans, well known to me, who, being duly sworn by me, deposes and says that his foregoing depositions are the truth, the whole truth, and nothing but the truth, and I then caused said A. Schreiber to sign his depositions in my presence.

In testimony whereof I have hereunto set my hand and seal of office this 27th day of March, A. D. 1883.

[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

Depositions of E. H. Reynes and I. Newman, Taken by Agreement of Counsel.

EMILE H. REYNES, sworn for respondents, says:

By Mr. DENIS:

—. Mr. Reynes, where do you reside? Do you reside in this city?
A. I do, sir.
Q. What is your profession?
A. Stock and bond broker.
Q. You were a partner of the firm of Reynes and Villere at one time?
A. I was, sir.
Q. Is the firm dissolved?
291 A. Yes, sir; since the 31st of last December.
Q. Haven't you been a president of one of our banks once?
A. Yes, sir; president of the Merchants' Bank.
Q. The Merchants' Bank?
A. Yes, sir.
Q. Mr. Reynes, you know Mess. Edm'd J. Forstall's Sons?
A. Yes, sir; intimately.
Q. You have known them for years?
A. Yes, sir.
Q. Have you been their brokers for years?
A. I have been their broker for the last seven or eight years, sir; ten years.
Q. Are you their confidential broker?
A. Yes, sir; I believe I am.
Q. Have you often had occasion to make sales of stocks or exchange for them?
A. Frequently, sir; very frequently; principally bonds; very few stocks; principally bonds.
Q. Have you had occasion to make a sale of bonds for them some time in the month of May, 1879?
A. I have, sir; I made a sale, a large sale, of city consolidated bonds of various denominations—premium bonds and State consols.
292 Q. Mr. Reynes, please look at this paper. (Document shown witness is Exhibit No. 2, attached to the answer of respondents.) Is this a correct copy of your return made to Mess. Edm'd J. Forstall's Sons?
A. It is, sir.
Q. Was that sale made on the 22nd of May, 1879, as there stated?
A. It was, sir.
Q. Mr. Reynes, is this statement of the sale made by you on that day correct?
A. Yes, sir; it is.
Q. This is what you sold the bonds for?
A. Yes, sir.
Q. Where was the sale made?
A. Did you say where?

Q. Where?

A. At the stock exchange, sir; during the last call of the stock exchange.

Q. What is the last call of the stock exchange?

A. Now it is 2 o'clock, formerly, at that time, I believe, it was 3 o'clock or half past two, I don't exactly remember. The hour has been changed; whether it is a half an hour sooner or later I don't know.

Q. How many calls has the stock exchange?

A. Three, sir.

Q. Three a day?

A. Yes, sir; at 10, 12, and 2 now; formerly, I believe, it was 11, 12, and half past two.

293 Q. Was this sale made publicly at the stock exchange?

A. Yes, sir.

Q. Was it made according to the rules of the stock exchange?

A. Yes, sir.

Q. Were there present at that call on that day any of our prominent brokers?

A. To the best of my knowledge they were all there, sir; there may have been one or two absent, but of course I took no notice of that.

Q. Most of them were there?

A. Yes, as usual.

Q. Mr. Reynes, were these prices shown in this Exhibit No. 2, at which you sold the bonds, the highest market prices of the bonds on that day?

A. Well, I don't remember whether it was the highest market of that day, because I don't know whether any other bonds were sold on that day, but it was the full market value of the bonds; whether one or two bonds may have been sold higher or lower I can't say. I have no knowledge of the fact.

Q. They were sold at the full market value?

294 A. For one month preceding and one month following these were the full market values of such bonds.

Q. You say that for one month preceding and one month following these were the full market values of such bonds?

A. Well, if you will allow me, I will say this, that from May 1st, 1879, until July 25th, 1879, they have fluctuated from .31¼ to .32½. They then went down, from July 25th to December 5th, gradually from .30 to .28½.

Q. Mr. Reynes, you are speaking now of the city consolidated bonds?

A. I am, sir.

Q. What of the city premium bonds? I see that you have sold fifty-four thousand dollars ($54,000) of premium bonds.

A. Yes, sir.

Q. Was that the full market value of those bonds on that day?

A. Yes, sir; the full market value on that day, but the fluctuations have been so great in premium bonds that it is impossible for me to say whether it was sold the same day, the day previous, or

following; that I can't tell you. I can only tell you by
295 reference to the quotations, but from memory I cannot.

Q. How did you proceed to sell these bonds at the stock exchange on the 22nd day of May, 1879?

A. How were they sold at the exchange?

Q. Yes.

A. I offered any part of the whole amount—say two hundred and sixty-six bonds—for sale, not less than ten bonds at a quarter or a half per cent. above the market value of the bonds, so as to have a bid at the market price on that day, or thereabout. Anybody, of course, could have taken the bonds. I had but one offer, to the best of my knowledge, for ten bonds at a half a point or a point under which the whole amount was sold.

Q. Was that mode of selling the bonds, in your judgment, the best way to get the highest value for them?

A. By far the best, sir. I will tell you why: If I only offered five or ten bonds for sale at a time and they were taken, and
296 then continued to offer more, ten by ten, I would have depressed the market evidently, no one knowing how many bonds I had for sale. I would have obtained a bid of one-quarter, or even one-half, per cent. less than I would otherwise have obtained. Perhaps I would not have been able to sell at all. The best way is to sell the whole amount or part of it. That way will tempt speculators. I consider one-half a point under the market value of the bonds a good sale, otherwise you may depress the market by hammering. The more bonds, of course, you put upon the market, if there is not a great demand for them, the more you depress the market. It is the A B C of the brokerage business.

Q. Mr. Reynes, what instructions did Mr. Forstall give you about the sale of these bonds as to the value or price at which you were to sell them?

A. Mr. Forstall or Mr. Schreiber (I don't remember which one of these two members of the firm did speak to me) gave me in-
297 structions to sell that amount of bonds at the full market value; that the bonds had to be sold for a special purpose, but not to be sold under the market value.

Q. Your memory is clear and you are positive of the instructions given to you by the gentlemen were that the bonds should not be sold for less than their market value?

A. I am sure of it, sir. I am sure of it, sir. That is the only thing of which I am sure in this whole affair.

Q. Now, Mr. Reynes, please state to us if Mr. Forstall gave you any instructions; and, if so, what instructions, for repurchasing these bonds after you had sold them.

A. Well, here is where my memory is not perfectly fresh. I must, therefore, say only what I think is the fact.

Q. To the best of your recollection.

A. Mr. Forstall—their firm—I don't remember whether it was Mr. Forstall or Mr. Schreiber, one of the members of the firm—instructed me to sell those bonds, as already stated, for a cer-
298 tain purpose—they had to be sold that day. At the same

time they told me that they would like to have the bonds back—to repurchase *to* bonds. I told them that I couldn't guarantee that.

Q. That you could not guarantee it?

A. No, sir. I could not; that if the bonds had to be sold at open board at the stock exchange anybody was apt to buy them, and, of course, I could not guarantee that the purchaser would resell them, but I would try to see if I could possibly effect the arrangement, and, to the best of my knowledge and belief, I made arrangement with Mr. Newman.

Q. What is the first name of Mr. Newman?

A. Isidore—Isidore Newman—by which, if he purchased the bonds, he would sell them to me at a specified profit, which profit I do not remember either, which was, though, a small affair, of one-quarter or one-half; but if he had not done so the thing might have fallen to the ground. I told Mr. Forstall I could not
299 guarantee it. Now, that is what I believe took place. I believe so. I am not sure. To the best of my recollection, there was an agreement between Mr. Newman and myself.

Q. Mr. Reynes, if those bonds had been sold at private sale on that day, or about that day, do you think they could have brought the same price?

A. Well, I don't know, sir; possibly they might and possibly they might not.

Q. They might or might not?

A. Sometimes it is preferable to make a private sale on certain conditions—you may get a little more than the market value. At other times it is better to offer when all the brokers are there.

Q. Is there any — way of knowing the market value of bonds and stock than by offering them at public sale at the stock exchange?

A. Well, the broker is always posted as to the market value of securities. That is his business—to follow the quotations every day—but the same day there may be a point or two points
300 difference between the callings—like to-day, for instance. I have frequently seen this thing done nearly every day. There are fluctuations of two or three points, not only the same day, but at the very same call, upon certain securities. It is impossible to calculate the market — within a point on the speculative stocks.

Q. Mr. Reynes, what is the reputation of Mess. Forstall's Sons and Mr. Schreiber in this community for commercial integrity?

A. As good as it can be. It is beyond any doubt or any question.

Q. Do you think that they are so held in the estimation of all?

A. Of everybody.

Q. Of everybody?

A. Everybody, sir—man and boy. There is but one opinion in commercial circles—they are highly respected.

Q. Mr. Reynes, when bonds of our free banks have been assigned by them to the State auditor and by the State auditor reassigned to the banks is it the usual thing to have them endorsed to
301 bearer by the bank for the purpose of selling them?

A. Yes, sir; it is—that is, I don't know that it is binding, but the question has been raised by some parties, as the owners of the bonds saw no objection to it. It has been done, and I now believe that it has to be done. To the best of my memory, the stock exchange in New York required it. Sales were made here for that market, and I believe they were sent back from there to be transferred to bearer.

Q. After they are transferred to bearer they are considered negotiable and marketable here amongst you brokers?

A. Of course they are. They are redeemable anywhere—in any market.

Q. I wish you would look at this paper, which is Exhibit No. 3, annexed to respondent's answer, and let us know whether this is a correct statement of the sales made by you for account and by order of Edm'd J. Forstall's Sons in the month of May, 1880, and the month of June, 1880, of certain city consolidated bonds, city
302 premium bonds, and Louisiana State consols.

A. It is, sir.

Q. Were the prices set forth in said statement, Exhibit No. 3, the the full market value of the bonds then sold?

A. From the examination that I have made in the records of the stock exchange for the purpose of this inquiry, the prices stated in said Exhibit No. 3 of the sales made by me in May, 1880, and June, 1880, were the full market value of the bonds at the time they were sold, although the same day bonds may have been higher or lower. At the time I sold them it was the best I could get for them, and the full value of the bonds. It was about the full value of the bonds at that day; that I know to be a fact. I can't say within a small fraction. I got for them the best possible price.

Q. Were they sold to strangers at these sales of May and June, 1880?

A. What do you call strangers?

Q. Others than Mess. Edm'd J. Forstall's Sons or Baring Bros. and Co.

303 A. They were sold to different brokers in the city.

Q. Do you know whether after those sales Mess. Baring Bros and Co. or Edm'd J. Forstall's Sons had any interest in the bonds?

A. I do not, sir; but I believe they had not.

Q. Were you then employed by Mess. Edm'd J. Forstall's Sons to sell them as you would be to sell any other bonds or property of theirs?

A. Yes, sir.

Q. Mr. Reynes, you have promised me to get from the records of the stock exchange the official quotations of the full market value of the city consolidated bonds and city premium bonds during the month of March, 1879, and every subsequent month in 1879, and every month of 1880, every month of 1881, until March, 1882. Have you made investigation?

A. I have made the investigation so far as the city consolidated

bonds are concerned only, not having understood you to mean the premium bonds or State bonds.

By consent of counsel the witness will add to his testimony
304 an abstract from the quotations of the stock exchange during the time alluded to of the full market value of the city premium bonds and attach it to his testimony; that same will be admitted as a correct abstract of the records of the stock exchange.

Q. Well, then, Mr. Reynes, please give us the official quotations of the stock exchange, of the full market value of the city consolidated bonds during the time that we have mentioned.

A. Very well, sir.

By consent of counsel the written statement of such quotations now presented by witness is accepted as part of his testimony, and as correct and true, and, for the purpose of identification, is marked "Exhibit A B."

Cross-examined by Mr. PARKERSON:

Q. Mr. Reynes, when you sold these bonds for account of the Forstalls, on the 22nd day of May, 1879, did you examine them carefully?

A. Yes, sir.

Q. Is it customary for purchasers to examine whatever bonds are offered for sale carefully?

305 A. Purchasers examine the bonds after they are delivered.

Q. After you had sold these bonds, Mr. Reynes, was any objection made to anything concerning them?

A. The first time?

Q. On the 22nd of May, 1879?

A. No, sir; not to my knowledge; there was none.

Q. Now, Mr. Reynes, when you sold them in May and June, 1880, did you examine them carefully?

A. I did, sir.

Q. What objection was made to the bonds in May and June, 1880?

A. I don't remember that any objection was made at all, sir.

Q. You don't remember that the purchaser made any objection?

A. I do not, sir.

Q. Do you know anything about the reason why these bonds had to be endorsed?

A. Yes. The reason why they had to be endorsed by the liquidators of the bank?

Q. Yes.

A. When the bonds were delivered after the sale it appears that I had overlooked that; they had not been retransferred by the commissioners, and the purchasers, or one of the purchasers,
306 I don't remember which, raised objections and said that the bonds should be transferred. This, at least, is what Mr. Forstall reminds me of. I don't remember it clearly myself, but it must have been so, because it is customary. They have, to be sold, to be delivered in the exchange. Therefore the statement he made there

must be correct, but I don't remember that the objection was made to me. It must have been made, however, but I don't remember it.

Q. Do you remember to whom you sold these bonds?

A. I do not, sir. I sold them to different brokers at the time. Not one of their names comes to my memory, nor do I remember whether they were sold in large or small lots.

Q. Mr. Reynes, do you think if you were to offer a note drawn by John Smith to the order of John Brown for sale upon the market, and John Brown's endorsement was not upon the note, that it would be transferable; that there would be any bids on it?

A. I do not, sir; of course not. If the check is not en-
307 dorsed it is not paid by the bank, and if it is not endorsed by the party to whose order it is drawn there would not be any bid.

Q. There would not be any bid?

A. No; if the endorser has not endorsed it.

Q. But a perfect stranger to this party, the endorsee—a perfect stranger to the payee would not bid on it, would he?

A. He would not bid on it if it were endorsed or not.

Q. But if it was not endorsed?

A. I can't suppose anything of the kind. If I offer you a note of Smith endorsed by Brown, when I deliver it to you it must be endorsed by Brown; otherwise, I would not be giving you what I promised to give you.

Re-examined in chief by Mr. DENIS:

Q. When bonds are sold at this stock exchange are they always exhibited by the broker offering them for sale?

A. At the stock exchange?

Q. Yes.

A. Never, sir.

Q. The purchaser only sees them when the delivery is made?

A. Certainly, sir.

Q. When is it usual to make the delivery?

308 A. The next day, when the sale is made regular; the same day, when the sale is made cash. In our rules we say "regular." The regular way means the next day—twenty-four hours after the sale, unless otherwise specified; but when you say "cash," it must be on the same day—on the spot.

Q. When collaterals, securities, or bonds, whatever it may be, are offered for sale and bid for, the bonds themselves are not there exposed to the parties?

A. No, sir.

It is admitted by counsel that the written statements furnished and to be furnished by the witness, Mr. Reynes, taken from the records of the Stock Exchange of New Orleans, published every Saturday, show the official quotations of the sales of city consolidated bonds, city premium bonds, made at the times stated in said written statements, and are taken and admitted instead of the official records of the stock exchange.

(Signed) E. H. REYNES.

I, Gustave Le Gardeur, Jr., a notary public in and for the
309 parish of Orleans, State of Louisiana, do hereby certify that this day before me personally appeared Emile H. Reynes, of the parish of Orleans, well known to me, who, being duly sworn by me, deposes and says that his foregoing depositions *are* the truth, the whole truth, and nothing but the truth, and I then caused E. H. Reynes to sign his depositions in my presence.

In testimony whereof I have hereunto set my hand and seal of office this 27th day of March, A. D. 1883.

[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

EXHIBIT "A B," Referred to in the Foregoing Testimony.

May	1.	Consolidated	31¼
	30.	Do.	31½
June	27.	Do.	32¼
July	25.	Do.	31¼
August	29.	Do.	30
Sept.	26.	Do.	30
Oct'r.	31.	Do.	32
Nov.	7.	Do.	29
"	30.	Do.	30½
Dec.	5.	Do.	28½
	Dec. 26.	Do.	30
310	1880.		
	Jan'y 30.	Do.	31
Feb'y	27.	Do.	32½
March	25.	Do.	35
Apr-l	16.	Do.	33¾
Do.	30.	Do.	38½
May	14.	Do.	36½
May	28.	Do.	39
June	18.	Do.	41¾
July	2.	Do.	43¾
Do.	30.	Do.	43½
August	27.	Do.	45½
Sept'r	24.	Do.	45½
Oct'r	29.	Do.	45¼
Nov'r	26.	Do.	50¼
Dec'r	31.	Do.	50
	1881.		
Jan'y	28.	Do.	49
Feb'y	11.	Do.	45
Do.	25.	Do.	51½
March	25.	Do.	52
Apr-l	29.	Do.	54
May	27.	Do.	59¾
June	17.	Do.	64
July	1.	Do.	67½
July	29.	Do.	72¼

Aug't	19.	Consolidated	76
Sept'r	2.	Do.	70½
Do.	16.	Do.	80
Oct'r	28.	Do.	81
Nov.	11.	Do.	78
Do.	25.	Do.	83
Dec'r	30.	Do.	82½
1882.			
	Jan'y 13.	Do.	85
311	Feb'y 3.	Do.	83½
	Do. 24.	Do.	86
March	17.	Do.	90
Do.	31.	Do.	92½
Apr-l	14.	Do.	94

Mr. ISIDORE NEWMAN, sworn for respondents, says:

By Mr. DENIS:

Q. Mr. Newman, do you reside in this city?
A. Yes, sir.
Q. What is your profession?
A. Banker and broker.
Q. Stock broker?
A. Yes, sir.
Q. Do you remember having, some time in the month of May, 1879, bought at the stock exchange in this city a number of city consolidated and premium bonds and some Louisiana State bonds?
A. I remember to have purchased city consolidated bonds and premium bonds; I don't remember having bought any State bonds, though I may have purchased them; of course I can't remember all these things. The amount was large.
Q. It was a large number of bonds?
A. Yes, sir.
Q. Do you remember, sir, from whom you bought them?
A. I bought them at the exchange from Mr. Reynes.
312 Q. Was it at the regular call hour of the exchange?
A. Yes, sir; at the regular call hour of the exchange.
Q. Do you remember which call it was?
A. The two-o'clock call, as well as I can remember.
Q. Do you remember whether the call was well attended by brokers on that day?
A. About as well as it is generally attended.
Q. Our prominent brokers were there?
A. Yes, sir.
Q. Most of them?
A. Oh, yes.
Q. Was this sale public?
A. Certainly. It was public to the members of the exchange. We don't admit the public at our sales. It was done according to the rules of the exchange.

Q. Did Mr. Reynes offer these bonds for sale as bonds are offered at the exchange generally?

A. Yes, sir; in the usual manner.

Q. Did you buy those bonds at their full market value?

A. Why, certainly. I bought them as low as I possibly could, but at the same time if they had been worth more, and if any one would have considered it a profitable purchase, they would have paid more. I did not pay any more for them than I could help.

313 Q. Did you buy them as you would have bought them had they been offered for sale by anybody else?

A. Why, certainly. I don't care who sells them. I bought them in the regular manner at the exchange.

Q. Now, Mr. Newman, please state to us if there was any agreement between you and Mr. Reynes as to the sale of these bonds; and, if any, what was the agreement?

A. As well as I can remember, there was no agreement between Mr. Reynes and myself. I purchased these bonds for my own account, thinking I could realize a profit, and I did realize a profit. Mr. Reynes—I remember indistinctly that he said something to me like, "Now, Mr. Newman, if I sell you these bonds at the exchange will you sell them at a profit?" I said, "That is a consideration for hereafter. If you pay me enough profit I might sell them to you. If you do not I will not." That is as well as I can remember.

314 Q. Mr. Newman, if you had not been disposed after the purchase to sell them back again to Mr. Reynes, would you have considered yourself bound to do so?

A. Under no circumstances whatever; I would not need to have delivered a single bond to Mr. Reynes, because he sold them to me. Any consideration of that kind is entirely out of the question. When I purchase bonds they become my property, and I have a right to dispose of them as I deem best.

Q. Do you remember whether there was any bidding on those bonds besides yours?

A. Yes; there was some bidding.

Q. On those same bonds?

A. On those same bonds, as the records of the exchange—stock exchange—will show. I think the records will show it. I remember there was bidding on them, however. I don't know whether the records will show it or not.

Q. Now, Mr. Newman, I don't desire to be indiscreet, but I would like you to state whether or not you are a man of large means?

315 A. My means are sufficient to buy a large amount of consolidated bonds, such as I purchased here, and, if necessary, I could buy twice or three times as large, or four times even. I think that at the time I did not have sufficient funds to pay for these bonds, and very often I buy large without having the means, but it is very easy for me to borrow money on these securities and hand them to the banks or insurance company as collaterals.

Q. When you say you had not the means, do you mean to say that you had not cash on that day?

A. Yes; I had not sufficient cash at the time, but that is immaterial to me.

Q. You can raise the money without any difficulty?

A. Yes, sir.

Q. Well, Mr. Newman, do you sometimes make large purchasers of securities?

A. Oh, yes, sir; I purchase larger amounts than those—considerably larger. I have bought already three times as much at
316 one time.

Q. When you bought these bonds did you pay for them?

A. Yes, sir.

Q. In what manner?

A. I gave my check for them, which is equivalent to money.

Q. Therefore when you say that you had not the means I understand you to say that you had not cash in bank?

A. In bank.

Q. But you have the means of raising the money?

A. Oh, yes.

Q. How long after the sale of the 22nd of May, 1879, did you sell the bonds back to Forstall's Sons?

A. I think it was the following day.

Q. Have you known Mess. Forstall's Sons and Mr. Schreiber, their former partner, any length of time?

A. I have known them for years.

Q. What is their reputation in commercial circles in New Orleans for honesty and honorability?

A. They are considered as being reliable, honest, honorable gentlemen and business men.

—. They are held in high estimation as merchants?

A. Yes, sir.

No cross-examination.

(Signed) ISIDORE NEWMAN, SR.

317 I, Gustave Le Gardeur, Jr., a notary public in and for the parish of Orleans, State of Louisiana, do hereby certify that this day before me personally appeared Isidore Newman, Sr., of the said parish of Orleans, well known to me, who, being duly sworn by me, deposes and says that his foregoing depositions *are* the truth, the whole truth, and nothing but the truth, and I then caused the said Isidore Newman, Sr., to sign his depositions in my presence.

In testimony whereof I have hereunto set my hand and seal of office this 27th day of March, A. D. 1883.

[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

Additional Deposition of E. H. Reynes, Together with Statement Annexed Thereto, Taken by Agreement of Counsel.

United States Circuit Court, Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, as Agents of Baring Bros. & Co. } No. 9977.

318 Additional deposition of Emile H. Reynes, taken by consent of parties.

EMILE H. REYNES, a witness for the defendants, after being duly sworn, deposes & says:

I have, since my first deposition in this case, as requested by Mr. Henry Denis, the solicitor of the defendants, copied from the records of the stock exchange in this city the lists of the official quotations, marked Exhibit "M" and Exhibit "N," which I hereto annex as part of my testimony, and which I declare to be exact copies of said official quotations in the records of said stock exchange.

I have also, since my first deposition, examined the records of said stock exchange and made diligent enquiries and found there and outside to whom I sold for account of E. J. Forstall's Sons, in May and June, 1880, the consolidated bonds of the city of New Orleans and premium bonds which I mentioned in my first deposition. I sold the same by various lots to different brokers in this city,
319 to wit, to J. M. Seixas & Co., Moore, Hyams & Co., H. W. Benjamin, G. Townsend, H. Roelli, and Isidore Newman.

Six words interlined approved.

(Signed) E. H. REYNES.

I, Gustave Le Gardeur, Jr., a notary public in and for the parish of Orleans, State of Louisiana, do hereby certify that this day before me personally appeared Emile H. Reynes, of the said parish of Orleans, well known to me, who, being duly sworn by me, deposes and says that his foregoing depositions *are* the truth, the whole truth, and nothing but the truth, and I then caused said E. H. Reynes to sign his depositions in my presence.

In testimony whereof I have hereunto set my hand and seal of office this 27th day of March, A. D. 1883.

[SEAL.] (Signed) G. LE GARDEUR, JR.,
Not. Pub.

EXHIBIT "M" and "N," Attached to the Foregoing Deposition.

EXHIBITS "M" and "N."

320 *Quotations of City Consolidated Bonds.*

1876.	
Jan'y 7	39
Feb'y 4	40
March 3	40½ @ 42
April 7	44½ @ 48

May	5	43½ @ 45
June	2	45
July	7	43½ @ 45
Aug't	4	40 @ 43
Sept'r	1	38
Oct'r	6	42
Nov.	3	No bid. 45
Dec'r	8	41 @ 42½
1877.		
Jan'y	5	40
Feb'y	2	43
March	3	43 @ 44
April	13	No bid or offer.
May	4	40½
June	1	47 @ 50¼
July	6	40 @ 41½
Aug.	3	38 @ 40
Sept'r	7	37½ @ 38¼
Oct'r	5	37½ @ 38½
Nov.	2	38½ @ 42
Dec.	7	40 @ 42½
1878.		
Jan'y	4	43 @ 44½
Feb'y	1	39½ @ 41
March	1	39 @ 39½
April	5	36 @ 41
May	3	35½ @ 40
June	7	36 @ 40
July	5	35¼ @ 36½
1878.		
Aug.	2	34½ @ 36
Sept.	6	35¼ @ 36½
Oct.	4	35½ @ 37
Nov.	1	37½ @ 40
Dec.	6	37½ @ 40
1879.		
Jan'y	3	31½ @ 34
Feb'y	7	28¼ @ 29¼
March	7	29⅝ @ 30

321 *Quotations of Premium Bonds.*

1879.		
March	7	25¼ @ 25½
April	4	24⅛ @ 24⅜
May	2	25¾ @ 26
June	6	25⅞ @ 25⅞
July	3	26 @ 26⅛
Aug-st	1	23¾ @ 24
Sept'r	5	24⅛ @ 24¼
Octob-r	3	29½ @ 29⅝

Nov.	7	$28\frac{7}{8}$ @ 29
Dec'b'r	5	$28\frac{1}{2}$ @ $28\frac{5}{8}$
1880.		
Jan'y	2	$28\frac{1}{4}$ @ $28\frac{1}{2}$
Feb'y	6	$27\frac{3}{4}$ @ 28
March	5	$30\frac{1}{4}$ @ $30\frac{3}{8}$
Apr'l	2	$34\frac{7}{8}$ @ 35
May	7	28 @ $28\frac{1}{4}$
June	4	32 @ $32\frac{3}{8}$
July	2	$33\frac{5}{8}$ @ $33\frac{3}{4}$
Aug-st	6	33 @ $33\frac{1}{4}$
Sept'r	3	$34\frac{1}{4}$ @ $34\frac{1}{2}$
Oct-b-r	1	35 @ $35\frac{1}{8}$
Nov'r	5	$34\frac{3}{4}$ @ $34\frac{7}{8}$
Dec'b'r	3	$35\frac{1}{4}$ @ $35\frac{1}{2}$
1881.		
Jan'y	7	$39\frac{5}{8}$ @ $39\frac{3}{4}$
Feb'y	4	$37\frac{1}{4}$ @ $37\frac{1}{2}$
March	3	$42\frac{5}{8}$ @ $42\frac{3}{4}$
April	1	$43\frac{3}{4}$ @ $43\frac{7}{8}$
May	6	$43\frac{1}{2}$ @ $43\frac{3}{4}$
June	3	$46\frac{1}{4}$ @ $46\frac{1}{2}$
July	1	59 @ $59\frac{1}{8}$
Aug-st	5	$72\frac{1}{2}$ @ $72\frac{5}{8}$
Sept'r	2	$70\frac{3}{8}$ @ $70\frac{5}{8}$
Oct'r	7	$72\frac{5}{8}$ @ $72\frac{7}{8}$
Nov.	4	$71\frac{7}{8}$ @ 72
Dec'r	2	72 @ $72\frac{3}{8}$
1882.		
Jan'y	6	$72\frac{1}{8}$ @ $72\frac{3}{8}$
Feb'y	3	$83\frac{1}{4}$ @ $83\frac{5}{8}$
Mar.	3	$78\frac{3}{4}$ @ $79\frac{1}{8}$

322 *Statement of Admissions on Behalf of Defendants, Signed by Solicitor of Complainants and Dated on the 28th of March,* 1883, *Referred to and Made Part of Defendants' Note of Evidence and Filed March 29th,* 1883.

United States Circuit Court, Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

Admissions on behalf of the defendants.

It is admitted as follows, to wit:

1. That the Mechanics' & Traders' Bank of New Orleans was decreed insolvent, its charter forfeited, and commissioners of liquidation appointed by judgment of the fifth district court for the parish of Orleans, a court of competent jurisdiction, on the 19th of March, 1879, in the suit entitled The State *ex rel.* A. V. Wogan *vs.* The Me-

chanics' & Traders' Bank, No. 9744 of the docket of said court. A. V. Wogan, the plaintiff in said suit, was a depositor of the bank, and his check on protest of which the demand for forfeiture of
323 charter was based was only for ninety dollars ($90). The bank, in its answer to the suit, admitted its own insolvency and the correctness of the plaintiff's claim.

2. That in the accounts & tableaux of distribution filed by the commissioners of liquidation in said suit there is no mention or showing made of the assets of the bank, but only a list given of its creditors, with the respective sums due them and the amount or percentage of dividends to be paid to them by the commissioners.

3. That in the first and the second of said accounts & tableaux filed on the 9th of August, 1879, by the commissioners the liabilities of the bank are shown in the "recapitulation" as follows, to wit:

Individual deposits	$151,202 02
Transferees of deposits	12,696 95
Registered claims	7,666 79
Contested claims	91,763 76
	$263,329 52

Among which contested claims there is enumerated & placed the balance of account in favor of Baring Brothers & Co. for $62,302.40, as shown by the account current of E. J. Forstall's Sons,
324 their agents, of the 4th of June, 1879, on file in this suit.

4. The copy of the "recapitulation" of the inventory of the assets of the bank, taken by order of court on the 21st April, 1879, by N. B. Trist, notary, is a true & correct copy, and is received instead of the whole inventory. The values put upon said assets in said inventory are those fixed by the appraisers appointed by the court, and sworn; said copy is marked "inventory."

5. That among the successive sheriffs of New Orleans during the last twenty years, six out of nine have been defaulters or delinquents, and their sureties have been sued on their bonds; and Gauthreaux, who was the sheriff when the bank failed and when the commissioners were put in possession of its assets, subsequently to the sale of the securities, on the 22nd May, 1879, proved to be a defaulter for a considerable amount and absconded.

6. That the signatures of H. Gally, president, and Moses Harris, cashier, affixed to the act of pledge of 11th March, 1876, marked Exhibit No. 1, and the signatures of John H. Ludwigsen, cashier,
325 affixed to the letter addressed to Messrs. E. J. Forstall's Sons, dated June 19th, 1877, pasted on said act of pledge, are all genuine signatures, and those persons were the president and cashier of the Mechanics' & Traders' Bank when they signed said documents, and they were properly empowered and authorized by the board of directors of said bank to sign them and to act thereunder.

7. That the several exhibits annexed to the answer of defendants in this suit as Exhibits Nos. 4, 5, 6, 7, 8, and 9 are true and correct copies of what they purport to be of the proceedings and judgments

in the two suits of E. J. Forstall's Sons, agents of Baring Bros. & Co., *vs.* L. Lacomb & others, commissioners, &c., No. 10002 of fifth district court, parish of Orleans, and The State *ex rel.* A. V. Wogan *vs.* Mechanics' & Traders' Bank, No. 9744 of same court.

8. That the copy of the order of the fifth district court of the 19th of May, 1880, authorizing the commissioners of liqui-
326 dation to endorse the bonds to bearer, marked "R," is a true and correct copy of such order.

9. That the whole of the debt of the Mechanics' & Traders' Bank to Baring Bros. & Co., as shown by account current, marked "B B," offered in evidence in this case, resulted from the open credit granted to said bank by Baring Bros. & Co. under the act of pledge of 11th of March, 1876, marked Exhibit No. 7, and that the excess of said debt over the £40,000 of open credit was caused partly because the bank on the day preceding its failure neglected to remit to Baring Bros. & Co. a sum of £2,000, and partly because two certain drafts previously remitted by the bank also to Baring Bros. & Co. were not paid by the drawees.

10. That the accounts and tableaux of distribution filed by the commissioners in the aforesaid suit of The State *ex rel.* A. V. Wogan *vs.* Mechanics' and Traders' Bank, No. 9744 of fifth district court, parish of Orleans, on the 7th of August, 1879, and the 9th
327 of February, 1880, were respectively homologated on the 28th of August, 1879, and the 25th of Feb'y, 1880, by judgment of the said fifth district court for the parish of Orleans.

11. That the commissioners have filed a third account & tableau on the 28th of April, 1880, which is only a statement of their expenses and charges, and in which no dividend is declared.

12. That the copy of the recapitulation of inventory, marked "inventory," is a true & correct copy and abstract of the inventory of the assets of the bank taken by order of the court by N. B. Trist, notary, on the 21st of April, 1879, and is received instead of the whole inventory.

13. That the statement of the proceeds of sales of real estate, marked "sales," has been furnished by the commissioners themselves, and is a correct statement of the proceeds of the sale of the real estate of the bank sold by them under order of court.

New Orleans, 28th March, 1883.

(Signed) HENRY DENIS,
Solicitor for D'f'ts.

(Signed) W. S. PARKERSON,
Solicitor for Complainants.

328 *The Agreement of Counsel, under Date of the 28th of March, 1883, Signed by Solicitors of Complainants and of Defendants, Referred to in Defendants' Note of Evidence and Filed March 29th, 1883.*

United States Circuit Court, Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

Agreement of counsel.

It is agreed in this case as follows, to wit:

1. The answer of defendants and the personal answer of Oscar J. Forstall, one of the firm of E. J. Forstall's Sons, he and they therein acting as agents of Baring Bros. & Co., were filed in proper time, the same having been done under agreement of counsel.

2. Copies of abstracts of the records of the two suits, of The State *ex rel.* A. V. Wogan *vs.* Mechanics' & Traders' Bank, No. 9744, fifth district court, parish of Orleans, and E. J. Forstall's Sons *vs.* L. Lacomb & others, commissioners, &c., No. 10002, fifth district
329 court, parish of Orleans, are to be received, without objection, instead of the whole records.

3. The several depositions of Leopold Lacomb, and Frank M. Hall, and John A. Blaffer, witnesses for the complainants, and of Sam'l Stafford, Oscar J. Forstall, Adolphe Schreiber, Emile H. Reynes, and Isidore Newman, and the additional deposition of Emile H. Reynes, witnesses for the defendants, have been taken by consent of counsel, subject to all legal objections, except as to the manner of taking the said depositions, and except as to such objections as have been waived at the taking of the said depositions, and except also as to such admissions as have been made at the taking of the said depositions, all such waivers and admissions appearing in writing in said depositions.

4. The consolidated bond of the city of New Orleans for $1,000, No. 2217, offered in evidence by defendants, shall not be marked "filed" or in any other way, in order not to be impaired in
330 its negotiability, but shall be shown to the court in specie, and then a copy of it shall be made by the clerk, which shall be & remain in evidence.

5. All acts of the Legislature of Louisiana and all decisions of the Supreme court of the United States and of the supreme court of Louisiana may be offered in evidence by simply reading the same from the official volumes containing such acts or decisions.

New Orleans, 28th March, 1883.

(Sig.) HENRY DENIS,
Solicitor for Def'ts.

(Signed) W. S. PARKERSON,
Solicitor f- Complai'ts.

Consolidated Bond of the City of New Orleans for $1,000, *Dated New Orleans, July 1st,* 1852, *Numbered* 2217, *Referred to in Defendants' Note of Evidence and Filed March 29th,* 1883.

(Copy of bond.)

Issued in conformity with the thirty-seventh section of the act of consolidation, passed by the Legislature of the State February, 23rd, 1852.

331 1,000. 1,000.

CITY OF NEW ORLEANS, STATE OF LOUISIANA.

A. No. 2217.

Know all men by these presents that the city of New Orleans is indebted to Wm. P. Converse, or bearer, in the sum of one thousand dollars, which sum the said city engages to pay in current money of the United States, at the office of the city treasurer, to said Wm. P. Converse, or bearer, in forty years from the date thereof, with interest at the rate of six per cent. per annum, payable semi-annually on the first days of January and July in each year on the delivery of the interest coupons attached, in the city of New York, at such bank as the comptroller of the city of New Orleans shall direct.

New Orleans, July 1st, 1852.

[SEAL.] (Signed) A. D. CROSSMAN, *Mayor.*
W. H. GARLAND, *Treasurer.*
(Signed) O. DE BUYS, *Comptroller.*

(Twenty-one coupons attached.)

One thousand dollars. One thousand dollars.

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

332 Interest coupon for thirty dollars, due in New York July 1st, 1882.

No. 60. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1883.

No. 61. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1883.

No. 62. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1884.

No. 63. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1884.

No. 64. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1885.

No. 65. W. H. G., *Treas'r.*

333 $30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1885.

No. 66. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1886.

No. 67. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1886.

No. 68. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1887.

No. 69. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1887.

No. 70. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

334 City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York January 1st, 1888.

No. 71. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1888.

No. 72. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1889.

No. 73. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1889.

No. 74. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York, Jan'y 1st, 1890.

No. 75. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

335 Interest coupon for thirty dollars, due in New York July 1st, 1890.

No. 76. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1891.

No. 77. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1891.

No. 78. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York Jan'y 1st, 1892.

No. 79. W. H. G., *Treas'r.*

$30. CITY OF NEW ORLEANS. $30.

City bond No. 2217 for $1,000.

Interest coupon for thirty dollars, due in New York July 1st, 1892.

No. 80. W. H. G., *Treas'r.*

(Endorsements.)

The Mechanics' & Traders' Bank of New Orleans hereby assigns the within bond to the auditor of the State of Louisiana in
336 conformity with an act to establish a general system of free banking in the State of Louisiana, approved April 30th, 1853.

New Orleans, October —, 1854.

(Signed) G. CRUZAT, *Cashier.*

I hereby retransfer the within bond to the Mechanics' and Traders' Bank of New Orleans in conformity with act No. 166 of the General Assembly, approved 15th March, 1855.

Baton Rouge, 23rd February, 1858.

(Signed) E. W. ROBERTSON, *Auditor.*

The Mechanics' and Traders' Bank of New Orleans hereby assigns the within bond to the auditor of the State of Louisiana in conformity with an act to establish a general system of free banking in the State of Louisiana, "approved April 30, 1853."

New Orleans, 26th October, 1858.

(Signed) G. CRUZAT, *Cashier.*

AUDITOR'S OFFICE,
NEW ORLEANS, *May 28th*, 1866.

Retransferred to the bank this day.

(Signed) H. PERALTA, *Auditor.*

Transferred to bearer without recourse.
337 New Orleans, May 20th, 1880.

(Signed) L. LA COMB.
" FRANK M. HALL.
" SAM. STAFFORD.

This is to certify that Leopold La Comb, Frank M. Hall, and Samuel Stafford, whose signatures are appended to the foregoing transfer to bearer without recourse to the within bond No. 2217, are the duly appointed and qualified liquidators of the Mechanics' and Traders' Bank of New Orleans, in liquidation; that said transfer is

made by order of the honorable fifth district court for the parish of Orleans in the matter of The State *ex rel.* A. V. Wogan *vs.* Mechanics' and Traders' Bank, No. 9744 of the docket of said court; that their signatures are genuine, and their acts and doings as such entitled to full faith and credit.

Witness my hand and seal, at New Orleans, Louisiana, this 20th day of May, A. D. 1880.

(Signed) A. ABAT, *N. P.* [L. S.]

UNITED STATES OF AMERICA, *ss:*

Circuit Court of the United States, Eastern District of Louisiana.

338 MECHANICS' AND TRADERS' BANK, in Liquidation,
vs.
EDMUND J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

CLERK'S OFFICE,
NEW ORLEANS, *March 29th*, 1883.

I, F. A. Woolfley, clerk of said court, do hereby certify that the four (4) preceding pages are a true and correct copy of the original bond of the city of New Orleans for one thousand dollars ($1,000.00), dated New Orleans, July 1st, 1852, and numbered (A) 2217, with 21 coupons attached, said coupons being numbered from sixty (60) to eighty (80), inclusive, attached to said bond, with the five several endorsements upon the reverse thereof, which was exhibited by the counsel of said defendants to the court on the trial of said cause on the day aforesaid.

As witness my hand and seal of the said court on the day aforesaid.

[SEAL.] (Signed) F. A. WOOLFLEY, *Clerk.*

339 *The Account Current of the Mechanics' and Traders' Bank with*
of Evidence and Fil

U. S. Circuit Court, East

MECHANICS' & TRADERS' BA
v.
E. J. FORSTALL'S

340 DR. *The Mechanics' & Traders' Bank, New Orleans,*

1878.											
Dec.	31	To balance of former account								44,759	4 1
		To dependencies from former %—drafts not appeared:									
		7 | 12 | '78, th. d'ft,	21	Nov.;	st.,	10	Jan'y		200		
		28 | 12 | '78, "	7	Dec.;	"	21	"		36	2	
		31 | 12 | '78, "	14	"	"	17	"		1		
										237	2
1879.											
Jan'y	4	To thr. d'ft,	19	Dec.;	60 ds.,	8	M'ch			244	6 9
	6	To "	21	"	"	11	"			100	
	7	To "	23	"	st.,	11	Jan'y			11	6 4
	"	To "	24	"	60 ds.,	11	M'ch			1,000	
	13	To "	24	"	"	17	"			2,000	
	"	To "	"		"	26	"			89	11
	"	To "	27	"	75 dd.,	15	M'ch		1,000		
		"	28	"	60 ds.,	18	"		86 2 1		
										1,086	2 1
	"	To "	26	"	"	17	"		1,734 19 5		
		"	"	"	"	19	"		25 2 4		
										1,760	1 9
	20	To "	4	Jan'y;	"	24	"			78	12
	21	To "	3	"	st.,	21	Jan'y			47	19 11
	"	To "	4	"	60 ds.,	25	M'ch			349	10 10
	22	To "	31	Dec.;	st.,	5	Feb.		32 18 5		
		"	3	Jan'y;	"	27	Jan'y		5 18		
		"	4	"	"	28	"		9 16 11		
		"	"	"	"	19	Feb.		9 16 11		
		"	"	"	"	23	Jan'y		41 1 8		
		"	"	"	60 ds.,	27	M'ch		59 12 4		
		"	"	"	"	26	"		424 7 1		
										583	11 4
	22	To "	6	"	"	31	"		200		
		"			"	28	"		232 12 3		
		"			st.,	28	Jan'y		6 7 4		
		"			"	30	"		6 7 4		
		"			60 ds.,	31	M'ch		297 14 5		
		"			75 dd.,	25	"		1,039 10		
										1,782	11 4
		Carried forward								£54,129	17 7
342											
1879.		Brought forward								£54,129	17 7
Jan'y	25	To thr. d'ft	10	Jan'y,	75 dd.,	29	M'ch			1,000	
	27	To "	7	"	st.,	27	Jan'y			8	
	"	To "	9	"	60 ds.,	1	Ap'l		462 10 4		
		" "	10	"	st.,	3	Feb.		11		
										473	10 4
	28	To "	13	"	60 ds.,	1	Ap'l			1,500	
	29	To "	13	"	"	2	Ap'l			141	13 4
Feb.	3	To "	16	"	st.,	11	Feb.		3		
		" "	"	"	30 dd.,	18	"		21		

Baring Brothers & Co., Marked "B. B.," Referred to in Defendants' Noted 29th March, 1883.

ern District of Louisiana.

NK, in Liquidation,
SONS, Agents, etc. } No. 9977.

in Account Current with Baring Brothers & Co. CR. 341

1879.							
Jan'y 6	By thr. rem'ce on C. B. Hobbes, 7 M'ch				200		
7	By " " " Cr. Lyonnais, 11 "				14	7	1
"	By " " " Drysdale Bros., 10 Feb.				102	7	1
8	By " " " W. I. Dixon & Co., 11 M'ch				851	8	7
9	By thr. rem'ce on De Jersey & Co., 11 "				1,000		
13	By " " " sundries, 13 Jan'y		15				
"	" 16 "		10				
					25		
"	By " " " I. Short, 18 M'ch				338	9	3
"	By " " " sundries, 17 "				3,000		
21	By " " " Leech, 22 "				1,000		
22	By " " " B'k Wintershur, 28 Ap'l				842	7	4
"	By " " " sundries, 26 M'ch		1,000				
	" 24 "		1,500				
	" 30 Jan'y		46	14	4		
					2,546	14	4
	Carried forward				£9,920	13	8
343							
1879.	Brought forward				£9,920	13	8
Jan'y 25	By thr. rem'ce on S. J. Hambro & Son, 29 M'ch				41	18	7
27	By thr. rem'ce on sundries, 1 M'ch		61	5	8		
"	" 31 "		438	6	6		
					499	12	2
28	By " on D. Cannon—Son, 31 M'ch						
30	" " sundries, 3 Ap'l		1,500				
"	" 2 "		2,000				
					3,500		

DR. *The Mechanics' & Traders' Bank, New Orleans, in Ac*

1879.													
Feb.	3	To thr. d'ft,	17	Jan'y,	60 ds.,	12	Ap'l			55	4	10	
		" "	18	"	"	7	"			551	10	5	
		" "	"	"	"	9	"			98	1	9	
		" "	"	"	"	10	"			52	6	5	
													781 3 5
	7	To "	22	"	75 dd.,	10	"						1,000
	10	To "	23	"	60 ds.,	22	"						200
	11	To "	28	"	"	16	Ap'l			1,000			
		" "	29	"	75 dd.,	17	"			1,500			
													2,500
	18	To "	30	"	st.,	19	Feb.						6 1 4
	"	To "	"	"	"	20	"			8	15		
		" "	"	"	"	22	"			8	2	11	
		" "	31	"	"	12	M'ch			13	6	4	
		" "	3	Feb.,	"	18	Feb.			92	4	3	
		" "	"	"	60 ds.,	24	Ap'l			166	6	1	
													288 14 7
	24	To "	10	"	75 dd.,	29	"			2,000			
		"			st.,	25	Feb.			79	18	4	
													2,079 18 4
	"	To "	6	"	75 dd.,	25	Ap'l			1,000			
		" "	7	"	60 ds.,	28	"			113	15	3	
		"			st.,	3	M'ch			67	7	4	
													1,181 2 7
	"	To "	8	"	75 dd.,	27	Ap'l						1,030 18 7
	"	To "	5	"	st.,	24	Feb.			96	6	4	
		" "	"	"	75 dd.,	24	Ap'l			1,000			
		" "	6	"	st.,	4	M'ch			61	9	6	
		" "	"	"	75 dd.,	25	Ap'l			1,500			
													2,657 15 10
M'ch	1	To bill on Watts, unpaid charges, 9 | 6, 25 Ap'l											33 6 9
		Carried forward											£69,012 15 4
344													
1879.		Brought forward											£69,012 15 4
March	3	To thr. d'fts, 13	Feb.,	st.,	6	M'ch				4			
		"		75 dd.,	2	May				4,000			
		"		st.,	12	M'ch				20	8	2	
		"		"	13	"				20	8	2	
													4,044 16 4
	"	To "	14	"	60 ds.,	8	May						82 5
	"	" "		"	st.,	15	M'ch			40	16	4	
		"	15	"	"	5	"			61	4	6	
		" "	"	75 dd.,	4	May				2,000			
													2,102 10
	4	To "	"	60 ds.,	9	"				36	4	3	
		"	17	"	"	7	"			83	18	7	
		"		"	13	"				18	18	3	
													139 1 1
	6	To paid for newspapers											7
	10	To thr. d'ft	24	Feb.,	60 ds.,	13	May						127 10
	"	To "	"	"	st.,					3			
		"	20	"	"	21	M'ch			28	13	9	
		"	21	"	"	11	"			51	19	6	
													83 13 3
	12	To "	24	"	"	15	"			50	4	1	
		" "	"	75 dd.,	13	May				3,000			
													3,050 4 1
	"	To "	26	"	15	"							3,000
	17	To "	1	M'ch,	"	18	"						2,000
	18	To "	1	"	60 ds.,	20	May						56 11 8

count Current with Baring Brothers & Co.—Continued. CR.

1879										
Feb.	3	By thr. rem'ce on sundries,	4	M'ch			54	4	11	
		"	7	Ap'l			60	12	2	
		"	7	"			235	7	7	
										350 4 8
	7	By " on "	14	"			90	17	8	
		"	11	"			170			
										260 17 8
	10	By " on "	16	M'ch			314	10	10	
		"	12	Ap'l			1,000			
										1,314 10 10
	11	By " on H. Berkefeld & Co., 15 Ap'l								2,500
	13	By thr. rem'ce on Drysdale,	15	M'ch						162 14 11
	18	By " sundries,	27	Feb.			50			
		"	22	Ap'l			80	9	4	
										130 9 4
	24	By " on W. Berkefeld & Co., 28 Ap'l								3,500
	"	By thr. rem'ce on sundries,	1	M'ch			32	17	3	
		"	30	"			151	18	10	
		"	28	Ap'l			384	3		
										568 19 1
	"	By " on "	28	Feb.			51	5		
		"	26	Ap'l			416	5		
										467 10
	25	By " on "	1	May			400			
		"	29	Ap'l			2,309	9		
		"	29	"			933	1		
		,,	29	Feb.			10	7	1	
										3,652 17 1
	26	By " on "	28	Ap'l			23	18		
		"	29	"			324	15		
										348 13
		Carried forward								27,331 6 6
345										
1879.		Brought forward								£27,331 6 6
M'ch	3	By thr. rem'ce on sundries,	5	May			519	4		
		"	5	"			2,179	2	6	
		"	3	M'ch			5			
										2,703 6 6
	"	By " on "	3	"			4	18		
		"	5	May			121	17	6	
		"	5	"			422	9	10	
		"	5	"			449	8	8	
										998 14
	4	By " on J. Robinson & Co., 7 May								105 1 1
	"	By " on W. I. Dixon & Co., 6 "								1,417 11
	10	By " on S. La Court & Co., 12 "								331 4 4
	"	By " on Pellas, Gerli & Co., 12 "								391 11 4
	"	By " on sundries,	12	April			111	3	10	
		"	12	May			22	10	4	
		"	12	"			475			
		"	12	"			360			
										968 14 2
	12	By " on De Jersey & Co., 15 May								5,000
	19	By " " Pellas, Gerli & Co., 21 May								900
	"	By " on sundries,	21	May						567 8 2
	"	By " on do.,	19	"			226	5	5	
			19	Ap'l			163	17	3	
			19	May			425	4	11	
			19	"			704	12	7	
										1,520 2

DR. *The Mechanics' & Traders' Bank, New Orleans, in Ac*

1879.												
March	19	To thr. d'ft,	3	M'ch,	60 ds.,	27	May				2,000	
	"	To "	5	"	75 dd.,	22	"				2,000	
	"	To "	1	"	st.,	22	M'ch				10	17 6
	22	To "	7	"	60 ds.,	24	May		173	6 3		
		" "	8	"	"	"			23	5 11		
											196	12 2
	24	To "	6	"	"	26	"		116	7 3		
		"	7	"	"	2	June		30	12 9		
		"	"	"	st.,				10	4 1		
		"			60 ds.,	3	June		392	16 4		
											550	5
	25	To "	10	"	"	27	May				200	
	26	To "	11	"	"	28	"		107	17 10		
		"	12	"	"	28	"		448	16 6		
		"			75 dd.,	29	"		3,000			
											3,556	14 4
		Carried forward									£92,212	19 10
346												
1879.		Brought forward									£92,212	19 10
M'ch	29	To thr. d'fts,	12	M'ch,	60 ds.,	31	May		535	10 7		
		"			"	31	"		151	16 3		
											687	6 10
	31	To "	12	"	"	4	June		26	1 6		
		"			st.				20	8 2		
		"			"				20	8 2		
		"	14	"	60 ds.,	2	June		294	2 6		
											361	4
Ap'l	1	To "	15	"	75 dd.,	1	"				2,000	
	2	To "	17	"	60 ds.				2,000			
		"			st.,	5	Ap'l		15	19 10		
											2,015	19 10
	5	To "	18	"	60 ds.,	7	June				110	16 11
	8	To "	18	"	"						55	
5/4		To paid telegram to New Orleans									1	9 4
	30	To remittance refused acceptance									1,450	
		To commission ¼ % on £50,543 1 10							126	7 2		
		To interest on items due before the 19 March, '79, as per account							481	6 6		
		To postage								10 4		
		To bill stamps							29	8 4		
											637	12 4
											£99,532	5 5
1879.												
April	30	To balance of former account, 19 M'ch									46,618	17 10

count Current with Baring Brothers & Co.—Continued. CR.

	Carried forward			£42,234 7 2
347				
1879.	Brought forward			42,234 7 2
M'ch 29	By thr. rem'ce on sundries		1,450	
"	" 29 M'ch		5	
"	" 29 "		5	
				1,460
"	By " on Pellas, Gerli & Co., 31 May			2,110
31	By thr. rem'ce on De Jersey & Co., 29 June			2,000
Apr. 2	By " W. Berkefeld & Co., 4 June			3,000
30	By drafts not accepted			2,109 5
"	By balance at debit of new account 19 M'ch			46,618 17 10
				£99,532 5 5

E. & O. E.
London, 30th April, 1879.
(Signed) BARING BROTHERS. & CO.

348 *Interest Account.*

							Dr. 5%.		
44759	4	1		Dr. 31 Dec., '78, to 10 Jan'y, '79	Dr.	10	61	6	3
200			p.						
44959	4	1		11 "		1	6	3	2
11	6	4	p.						
44970	10	5		13 "		2	12	6	5
15			r.						
44955	10	5		16 "		3	18	9	6
10			r.						
44945	10	5		17 "		1	6	3	1
1			p.						
44946	10	5		21 "		4	24	12	6
84		1	p.						
45030	10	6		23 "		2	12	6	9
41	1	8	p.						
45071	12	2		27 "		4	24	13	11
13	18		p.						
45085	10	2		28 "		1	6	3	6
16	4	3	p.						
45101	14	5		30 "		2	12	7	1
6	7	4	p.						
45108	1	9							
46	14	4	r.						
45061	7	5		3 Feb'y,		4	24	13	10
11			p.						
45072	7	5		5 "		2	12	7	
32	18	5	p.						
45105	5	10		10 "		5	30	17	11
102	7	1	r.						
45002	18	9		11 "		1	6	3	3
3			p						
45005	18	9		18 "		7	43	3	1
113	4	3	p.						
45119	3			19 "		1	6	3	7
16	10	11	p.						
45135	13	11		20 "		1	6	3	8
8	15		p.						
45144	8	11		22 "		2	12	7	4
8	2	11	p.						
45152	11	10		24 "		2	12	7	5
96	6	4	p.						
45248	18	2		25 "		1	6	4	
79	18	4	p.						
45328	16	6							
10	7	1	r.						
45318	9	5		27 "		2	12	8	4
50			r.						
45268	9	5		28 "		1	6	4	
51	5		r.						
45217	4	5		1 M'ch,		1	6	3	11
33	6	9	p.						
45250	11	2							
94	2	11	r.						
45156	8	3		3 "		2	12	7	5
67	7	4	p.						
45223	15	7							
9	18		r.						
45213	17	7		4 "		1	6	3	10
61	9	6	p.						
45275	7	1							
54	4	11	r.						
45221	2	2		5 "		1	6	3	11
					Carried forward		£394	14	8

Interest Account—Continued.

349										
45221	2	2			5 M'ch,	Brought forward		£394	14	8
61	4	6	p.							
45282	6	8		to	6 M'ch,	Dr.	1	6	4	1
4	7		p.							
45286	13	8			7 "		1	6	4	1
200	----		p.							
45086	13	8			8 "		1	6	3	6
244	6	9	p.							
45331	---	5			10 "		2	12	8	5
851	8	7	r.							
44479	11	10			11 "		1	6	1	10
1151	19	6	p.							
45631	11	4								
1014	7	1	r.							
44617	4	3			12 "		1	6	2	3
33	14	6	p.							
44650	18	9			13 "		1	6	2	4
20	8	2	p.							
44671	6	11			15 "		2	12	4	9
1091	----	5	p.							
45762	7	4								
162	14	11	r.							
45599	12	5			16 "		1	6	5	
314	10	10	r.							
45285	1	7			17 "		1	6	4	1
3734	19	5	p.							
49029	1	------								
3000	----		r.							
46020	1	--------			18 "		1	6	6	1
86	2	1	p.							
46106	3	1								
338	9	3	r.							
45767	13	10			19 "		1	6	5	5
15	2	4	p.							
45792	16	2		At Dr.						
				At debit in ac.				£481	6	6

350 *The Copy of the "Recapitulation" of the Inventory of the Assets of the Bank, Taken by Order of Court by N. B. Frist, Notary, on 21st April, 1879, Marked "Inventory," and Referred to in Defendants' Note of Evidence and Filed March 29th, 1883.*

Recapitulation.

Fixtures, Furniture, &c., fifteen hundred and eighty-one $\frac{30}{100}$ dollars	$1,581 30
Discounted paper in possession of the bank, thirty-two thousand two hundred & sixty-eight $\frac{13}{100}$ dollars	32,268 13
Bonds in possession of the bank, twenty-four dollars	24
Discounted paper pledged to Baring Bros. & Co., seventy-five thousand one hundred and seventy-three $\frac{89}{100}$ dollars	75,173 89
Bonds pledged to same, ninety-eight thousand seven hundred dollars	98,700

Mutilated currency, five hundred & twelve $\frac{51}{100}$ dollars	512	51
Currency, twenty-nine $\frac{80}{100}$ dollars	29	80
Forward	$208,289	63
351 Forward	$208,289	63
Revenue stamps, two $\frac{18}{100}$ dollars	2	18
Post. stamps & car tickets, one $\frac{59}{100}$ dollars	1	59
Silver & copper coins, American & foreign, gold & nickels, four hundred and six $\frac{31}{100}$ dollars	406	31
Checks, four hundred & sixty-four $\frac{65}{100}$ dollars	464	65
Coupons, State bonds, sixty-three dollars	63	
Claims of various kinds, eight thousand seven hundred and forty-seven $\frac{6}{100}$ dollars	8,747	06
Vault, twelve hundred dollars	1,200	
Safe in vault, three hundred dollars	300	
Real estate in Louisiana, forty-seven thousand one hundred dollars	47,100	
Real estate in other States, ten thousand three hundred dollars	10,300	
Cash on deposit in Mutual National Bank, ten thousand four hundred and eighty-three $\frac{5}{100}$ dollars	10,483	05
Forward	$287,357	47
352 Forward	$287,357	47
Cash in hands of the civil sheriff of the parish of Orleans, eighteen thousand nine hundred and two $\frac{22}{100}$ dollars	18,902	22
Total appraised value of the present inventory, three hundred and six thousand two hundred and fifty-nine $\frac{69}{100}$ dollars	$306,259	69

Statement of Proceeds of Sales of Real Estate Furnished by the Liquidators, Marked "Sales," Referred to in Defendants' Note of Evidence, and Filed March 29th, 1883.

Sales of real estate by commissioners of M. & T. Bank.

Hardtimes plantation, 25%, in deposits	$20,000	00
Breaulieu " 25% "	8,000	00
St. Helena lands, cash	125	00
Madison parish lands, cash	65	00
Bayou road property, 30%, in deposits	5,700	00
Sixth-street property, 30%, "	4,125	00
Property in Memphis, cash	3,380	00
Property in Shelby county, Tenn., cash	1,450	00
Yazoo property, Miss., cash	4,000	00
Dryades-street property, cash	6,000	00
	$52,845	00

353 *Motion to Suppress. Filed March 29th*, 1883.

U. S. Circuit Court, 5th Circuit & Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK
vs.
BARING BROS. & CO. } No. 9977.

On motion of W. S. Parkerson, solicitor for complainants, and on showing to the court that the testimony of Isidore Newman contradicts the sworn answer of defendants, in that he denies that there was any understanding between himself and Forstall's Sons as to the sale of the bonds;

Again, that these defendants have attempted to introduce in evidence certain letters written by Forstall's Sons in their own favor—

It is ordered that the said defendants show cause why the testimony of said Isidore Newman and the said letters should not be suppressed.

Hearing and Submission.

Extract from the Minutes, November Term, 1882.

NEW ORLEANS, FRIDAY, *March 30th*, 1883.

354 Court met pursuant to adjournment.
Present: Hon. Don A. Pardee, circuit judge.

MECHANICS' & TRADERS' BANK, in Liq.,
vs.
E. J. FORSTALL'S SONS, Agents, &c. } No. 9977.

This cause, as continued from yesterday, came on this day to be further heard, and was further argued by the counsel for the parties, respectively, and submitted, and the court took time to consider.

Decree Dismissing Bill. Entered & Filed April 16th, 1883.

United States Circuit Court, Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

This cause came on to be heard upon the bill, answer, replication, proofs, and exhibits, and was argued by counsel.

On consideration whereof, it is ordered, adjudged, and decreed that there be a decree in favor of the defendants, and that the bill of said complainants be dismissed at their costs.

April 16th, 1883.

(Signed) DON A. PARDEE,
Circuit Judge.

355 *Motion and Order to Make Widow and Representative of O. J. Forstall Party. Entered & Filed January* 31, 1884.

U. States Circuit Court, 5th Circuit and Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

On motion of W. S. Parkerson, solicitor for complainants, and on suggesting to the court that Oscar J. Forstall, of the firm of E. J. Forstall's Sons, agents of Baring Bros. & Co., departed this life on the 2nd day of January, 1884; that his succession was opened on January 5th, 1884, in the civil district court of this parish of Orleans and numbered 10299 of the docket of said court, and upon further suggesting to the court that the said succession is represented by Mrs. Caroline Bérault, widow in community and natural tutrix of her minor children, it is ordered that the said Mrs. Caroline Berault be made a party to this cause as the representa-
356 tive of her said deceased husband, Oscar J. Forstall, and that she be notified in accordance herewith.

(Signed) DON A. PARDEE, *Judge.*

Marshal's Return.

Received, Feb. 1, 1884, by the U. S. marshal and on the 2d day of February, 1884, served a true copy of within motion & order on Mrs. Caroline Berault by leaving the same at her domicile, 122 St. Louis street, in the hands of Miss B. Dee, a resident of said domicile and of lawful age.

(Signed) J. R. G. PITKIN,
U. S. Marshal,
By J. H. SIMONDS,
D'y U. S. Marshal, East. Dist. of La.

Petition for Appeal. Filed January 31*st*, 1884.

U. S. Circuit Court, Fifth Circuit and Eastern District of Louisiana.

MECHANICS' & TRADERS' BANK, in Liquidation,
vs.
E. J. FORSTALL'S SONS, Agents of Baring Bros. & Co. } No. 9977.

The honorable judge of the United States circuit court, in equity:

The complainants, Leopold La Combe, Frank M. Hall, and
357 Samuel Stafford, commissioners of the "Mechanics' and Traders' Bank," in liquidation, conceiving themselves aggrieved by the final decree entered on the 16th day of April, 1883, in the above-entitled cause, do hereby appeal therefrom to the Supreme Court of the United States; and they pray that this their appeal may be allowed, and that a transcript of the record, proceedings, and evidence in this cause, duly authenticated, may be sent to

the Supreme Court, and that the defendants be cited in accordance with law.

(Signed) W. S. PARKERSON,
Solicitor for Complainants.

Order.

Let the appeal be granted as above prayed for, returnable to the Supreme Court of the United States at its next term, beginning on the second Monday of October, 1884, upon complainants giving bond in the sum of five hundred dollars.

New Orleans, July 31st, 1884.

(Signed) DON A. PARDEE, *Judge.*

358 *Bond for Appeal. Filed February 2nd,* 1884.

UNITED STATES OF AMERICA:

Know all men by these presents that we, Leopold La Combe, Frank M. Hall, and Samuel Stafford, commissioners of the "Mechanics' & Traders' Bank," in liquidation, and Samuel Stafford, as surety, are held and firmly bound, jointly and severally, unto E. J. Forstall's Sons, agents of Baring Bros. & Co., of London, England, in the sum of five hundred ($500.00) dollars, lawful money of the United States of America, to be paid to the said E. J. Forstall's Sons, as agents of Baring Bros. & Co., of London, England, their heirs, executors, administrators, and assigns; for which payment, well and truly to be made, we bind ourselves and each of us by himself and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated the thirty-first day of January, in the year of our Lord eighteen hundred and eighty-four.

Whereas the said Leopold La Combe, Frank M. Hall, & Samuel Stafford, com., etc., having heretofore, to wit, on the thirty-first
359 day of January, 1884, taken an appeal to the Supreme Court of the United States from and to reverse the decree rendered on the — day of ——, 1883, by the circuit court of the United States for the fifth circuit, holding sessions in and for the eastern district of Louisiana, in the suit of "Mechanics' & Traders' Bank," in liquidation, *vs.* E. J. Forstall's Sons, as agents of Baring Bros. Co., No. 9977 of the docket thereof:

Now, the condition of the above obligation is that if the above-bounden L. La Combe, F. M. Hall, & S. Stafford, commissioners, etc., shall prosecute their said appeal to effect, and shall answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) L. LA COMBE, [L. S.]
" FRANK. M. HALL, [L. S.]
" SAM. STAFFORD, [L. S.]
Commissioners Mechanics' & Traders' Bank, in Liq.

Signed, sealed, and delivered in the presence of—
(Signed) W. S. PARKERSON.
(Signed) SAM. STAFFORD.

UNITED STATES OF AMERICA, } ss:
District of Louisiana, }

Personally appeared Samuel Stafford, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in New Orleans, and is worth the full sum of five hun-
360 dred dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed) SAM. STAFFORD.

Subscribed and sworn before me this second day of February, 1884.

[SEAL.] N. B. TRIST,
Not. Pub.

I approve the above bond and sufficiency of the surety thereto.

(Signed) DON A. PARDEE, *Judge.*

361 UNITED STATES OF AMERICA:

Circuit Court of the United States, Fifth Circuit and Eastern District of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 360 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced, on the trial of the case of Mechanics' and Traders' Bank, in liquidation, *v.* E. J. Forstall's Sons, agents Baring Brothers & Co., No. 9977 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 16th day of August, A. D. 1884.

{ Seal U. S. Circuit Court for the 5th Circuit & Eastern District of La. }

E. R. HUNT, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to h.. official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 16th day of August, A. D. 1884.

DON A. PARDEE, *Judge.*

362 THE UNITED STATES OF AMERICA:

Circuit Court of the United States, Eastern District of Louisiana.

The President of the United States to Edmond J. Forstall's Sons, as agents of Baring Bros. & Co.—the said Forstall's Sons being a commercial firm composed of Oscar J. Forstall and Ernest L. Forstall; the said Ernest L. Forstall having departed this life on the 2nd day of January, 1884, his succession is now represented by Mrs. Caroline Berault, widow in community and natural tutrix of her minor children—Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington on the second Monday of October next, pursuant to a petition and order for an appeal filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Leopold Lacombe, Frank M. Hall, and Samuel Stafford, commissioners of the Mechanics' and Traders' Bank, in liquidation, are appellants and you are appellees, to show cause, if any there be, why the judgment rendered against the said Leopold Lacombe, Frank M. Hall, and Samuel Stafford, commissioners aforesaid, as in said petition and order for an appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 2nd day of February, in the year of our Lord one thousand eight hundred and eighty-four.

DON A. PARDEE, *Judge.*

363 [Endorsed:] Henry Denis, solicitor. United States circuit court, eastern district of Louisiana. No. 9977. Leopold Lacombe, Frank M. Hall, and Samuel Stafford, commissioners of the Mechanics' & Traders' Bank, in liquidation, appellants, *vs.* E. J. Forstall's Sons, as agents of Baring Bros. & Co., appellees. Citation to appellees.

Marshal's Return.

Received, Feb. 5, 1884, by the U. S. marshal and on Feb'y 6th, 1884, I served a true copy of the within citation of appeal on the appellees within named, to wit, Edmond J. Forstall's Sons, as agents of Baring Bros. & Co., the said Forstall's Sons being a commercial firm composed of Oscar J. Forstall and Ernest L. Forstall. The said Ernest L. Forstall having departed this life on the 2nd day of January, 1884, his succession is now represented by Mrs. Caroline Berault, widow in community and natural tutrix of her minor children, by handing the same to Henry Denis, Esq., solicitor for said appellees, in person, and leaving the same in his hands in the city of New Orleans, eastern district of Louisiana.

J. R. G. PITKIN,
U. S. Marshal, Eastern District of La.,
By DAN. A. ROSE.
D'y U. S. Marshal.

Personally appeared before me Dan. A. Rose, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and make- oath that he served a true copy of the within citation of appeal on the appellees named in the within writ as set forth in his official return hereon.

DAN. A. ROSE,
D'y U. S. Marshal.

Subscribed and sworn before me February 7, 1884.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 347. Leopold Lacombe, Frank M. Hall, and Samuel Stafford, commissioners of the Mechanics' and Traders' Bank, in liquidation, appellants, *vs.* Edmond J. Forstall's Sons, as agents of Baring Bros. & Co., Mrs. Caroline Berault, widow &c. Filed 6th October, 1884.

No. 89.

Personally appeared before me Dan. A. Rose, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and make oath that he served a true copy of the within citation of appeal on the appellees named in the within writ as set forth in his official return hereon.

DAN. A. ROSE,
Dy U. S. Marshal.

Subscribed and sworn before me February 7, 1884.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

Endorsed on cover: E. Louisiana C. C. U. S. No. 347. Leopold Lacombe, Frank M. Hall, and Samuel Stafford, commissioners of the Mechanics' and Traders' Bank, in liquidation, appellants, *vs.* Edmond J. Forstall's Sons, as agents of Baring Bros. & Co., Mrs. Caroline Berault, widow &c. Filed 6th October, 1884.

Supreme Court of the United States.

OCTOBER TERM 1887.

No. 69.

LEOPOLD LACOMBE AND OTHERS, Commissioners of The Mechanics' and Traders' Bank, Appellants,

vs.

EDMUND J. FORSTALL'S SONS, as Agents of Baring Bros. & Co. et al., Appellees.

BRIEF FOR APPELLANTS.

CRAMMOND KENNEDY,
W. S. PARKERSON,
Of Counsel.

Press of Thomas McGill & Co., Washington, D.C.

IN THE

Supreme Court of the United States.

October Term 1887—No. 69.

LEOPOLD LACOMBE AND OTHERS, Commissioners of the Mechanics' and Traders' Bank, Appellants,

vs.

EDMUND J. FORSTALL'S SONS, as Agents of Baring Bros. & Co. et al., Appellees.

BRIEF FOR APPELLANTS.

STATEMENT OF FACTS.

This cause comes to the Supreme Court on appeal from a decree rendered by the United States Circuit Court for the Eastern District of Louisiana dismissing the complainants' bill.

The Record shows that the complainants in the suit below (appellants here) are commissioners appointed under the laws of Louisiana to wind up the affairs of the Mechanics' and Traders' Bank of New Orleans (fol. 1, p. 1). The said bank was declared insolvent, and the said commissioners appointed, March 19, 1879 (fol. 322, p. 129). The defendants in the suit below (appellees here) are the firm of E. J. Forstall's Sons, as agents of Baring Bros. & Co., bankers of London, Great Britain. The names of the members of the principal firm, the real defendants, and the fact that they reside in London, and are subjects of Her Britannic Majesty, are set out in the answer (fol. 15, p. 6). In 1876,

when the said bank was solvent and engaged in its legitimate business, it obtained a credit of forty thousand pounds sterling (£40,000) with the Barings, through their agents, Forstall's Sons, in New Orleans. To secure this credit, or whatever it might owe the Barings on that account, the bank deposited with the Forstalls, as agents of the Barings, $280,000 in consolidated bonds of the city of New Orleans; $54,000 in premium bonds of the same city, and $2400 in 7-per-cent. consolidated bonds of the State of Louisiana, amounting in all (face value) to $336,400 (fols. 3, 4, 5, p. 3). There was other collateral which, as it is not involved in this controversy, need not be mentioned. The "act of pledge," which is printed on page 28 of the Record, contains the following provision:

> And it is hereby agreed that in the event of the nonpayment of the amount due, as above stated, Edm. J. Forstall's Sons are hereby authorized, as agents of Messrs. Baring Bros. & Co. and of the bank, to cause such pledged property to be disposed of for cash, at public or private sale, at the option of said Edm. J. Forstall's Sons, and the proceeds of said sale shall be applied to the payment of the amount due, as aforesaid, with interest accrued thereon, and all commissions, costs, and charges attending said sale, the obligation of the bank for any balance that may be left uncovered by the proceeds of said sale remaining in full force.

The aforesaid consolidated bonds had been specially indorsed by the bank to the State Auditor as early as 1854 (fol 336, p. 136), and subsequently reindorsed by the State Auditor to the bank, prior to the pledge of March 11th, 1876, under which they were delivered by the bank to the defendants. But this delivery was without indorsement. The Civil Code of Louisiana contains the following provisions on the subject of pawn or pledge:

> 3156. [3123.] When a debtor wishes to pawn a claim on another person, he must make a transfer of it in the act of pledge, and deliver to the creditor to whom it is trans-

ferred the note or *obligation* which proves its existence, if it be under private signature, and *must indorse it* if it be negotiable.

3158. [3125.] * * * When a creditor wishes to pawn promissory notes, bills of exchange, stocks, obligations or claims upon other persons, he shall deliver to the creditors the notes, bills of exchange, certificates of stock, or other evidences of the claims or rights so pawned; and such pawn so made, *without further formalities*, shall be valid as well against third persons as against the pledgers thereof, if made in good faith.

3166. [3128.] On the other hand, this notification of the act of pledge to the person owing the debt pledged, shall not be necessary if the debt is evidenced by a note or other obligation, payable to the bearer or to order, because in that case it will suffice that the note or obligation shall have been *indorsed by the person pledging it*, to invest the creditor with the privilege above mentioned.

The Supreme Court of the United States had decided [Oct. Term, 1877], in the case of *Casey* v. *Schneider*, that the foregoing article 3158 of the Louisiana Code was in force, and that the actual delivery of the securities [without indorsement] was sufficient to constitute a pledge.

The bank continued in business until March 19, 1879, when it was declared insolvent, and the complainants were put in possession May 3, 1879, to wind up its affairs as aforesaid. In May, 1879, some time between the 13th and 20th, the Barings, through their said agents, left a statement of their account with the bank at the office of the said commissioners, showing a balance of $227,267.09 as of the 30th of April, 1879, in favor of the Barings (fol. 126, p. 51). Mr. Lacombe, one of the commissioners, thought that the account was presented later than the 13th (fol. 135, p. 55)—on or about the 17th or 18th of May, 1879, (fol. 133, p. 54). He testifies that he told Mr. Gordon (the Forstalls' attorney), who presented the account, that it was "rather a lengthy document," and that the commissioners were "novices in the working of the bank;" to which Mr. Gordon replied: "Why, take your time about that; we know it is a long

document; take your time; I don't expect you to get through this in a day or in a week" (fols. 134, 135, pp. 54, 55).

Mr. Oscar Forstall (one of the defendants) testifies that Mr. Gordon demanded payment (fol. 255, p. 102). What was done at the presentation of the account was the only demand. Mr. Gordon was not called as a witness, his state of health preventing his examination. (Fol. 284, p. 113.) All the commissioners testify that there was no demand of payment. And it is agreed that there was no notice of time or place of sale.

On the 22d of May, 1879, the commissioners were in attendance at the Fifth District Court in New Orleans, where a suit brought against them by the defendants for five hundred and sixty coupons of the said bonds was pending. These coupons—part of the pledged property—had been delivered by the Forstall Sons to the bank, previous to its failure, for collection, and had neither been collected nor returned.

The commissioners met Mr. Oscar Forstall in court on that day (May 22, 1879), and had some conversation with him in regard to the bonds, and it seems that the commissioners, or one of them, indicated a purpose to test the validity of the pledge.

On this point Commissioner Hall testified:

> The conversation was in regard to a suit against the bank in regard to coupons. I remarked to Mr. Forstall that I thought we would win that case, and *they would most probably have to give up the bonds to us. If they did not, they could not dispose of them.* (Fol. 188, pp. 74, 75).

Referring to the same conversation, Mr. Forstall testified as follows:

> Q. Please tell us how you came to sell the bonds sued for in this case, on the 22d of May, 1879?
>
> A. Because I was threatened by one of the liquidators that they would *sequester the bonds and place them in the hands of the sheriff*, in whose integrity I hadn't sufficient confi-

dence to allow me to place that amount of bonds in his hands. (Fol. 228, p. 91.)

Q. Mr. Forstall, one or two of the commissioners, in giving their testimony in this case, have stated that you have promised them not to sell the bonds without giving them notice of the fact, and that the very same day that you made such promise the bonds were sold.

A. I never made any such promise, sir.

Q. What have you to say on that point? Please state it to us.

A. Not only I made no promise, but, at the court, Mr. Hall was told by me that it was very important that I should have these coupons which were missing on certain bonds. The bonds were disputed on that account, and in order that I could sell these collaterals and establish our final account, and Mr. Hall remarked, "*Well, you are not going to dispose of them*"—*of these collaterals.* I said, "Of course I am." He said, "*Well, we are going to enjoin you and sequester them.*" That is what occurred, and upon that the sale was made, after consultation with our lawyers, for the purposes above mentioned. That is the whole thing. (Fol. 235, p. 94).

Q. Well, then, to put it more particularly, you did it for the purpose of preventing them from getting an injunction or sequestration for the purpose of getting hold of these bonds?

A. *We hurried the sale for that purpose*, but we sold the bonds for the purpose of establishing the exact value of the bonds, and in order to establish our account. (Fols. 255, 256, 257, p. 102).

So much for the objects which the defendants had in view when they sold the bonds on the 22d of May, 1879. The manner of the "sale" is described as follows in the answer (fol. 23, pp. 8 and 9):

The said E. J. Forstall's Sons, as agents of Baring Brothers & Co., *directed the said brokers to offer privately to whomever would bid upon said securities, to buy them back from such bidders at an advance price of one-eighth per cent.;* that at said sale a small lot of said securities was first put up and bid for, and only after thus ascertaining the real market value thereof were all the said bonds adjudicated and sold to

Messrs. I. Newman & Bro., also well-known and honorable brokers of this city, for the prices set forth in the detailed statement, marked Exhibit No. 2, which is hereto annexed for reference, and made part hereof; that accordingly the said E. J. Forstall's Sons, as agents of Baring Bros. & Co., *afterwards purchased from the said I. Newman & Bro. all the said bonds.*

If the complainants had received notice of the sale, and it had transpired that "the said E. J. Forstall's Sons, as agents of Baring Bros. & Co., *directed the said brokers to offer privately to whoever would bid upon said securities, to buy them back from such bidders at an advance price of one-eighth per cent.,*" the creditors of the bank or the commissioners could have arranged to run up the bonds to such a price as would have canceled the debt and left a balance in their favor, while their brokers' commission of an eighth would have been paid by the Barings. Of course, it was only to two brokers—one engaged as seller and the other as buyer, and both acting for the same parties—that is, the defendants—that the scheme was communicated. The seller was Mr. E. H. Reynes. He was called by the defendants and testified (fols. 298, 299, pp. 118, 119):

A. Mr. Forstall—their firm—I don't remember whether it was Mr. Forstall or Mr. Schreiber, one of the members of the firm, instructed me to sell those bonds, as already stated, for *a certain purpose—they had to be sold that day.* At the same time they told me that *they would like to have the bonds back—to re-purchase* the bonds. I told them that I couldn't guarantee that.

Q. That you could not guarantee it?

A. No, sir; I could not; that if the bonds had to be sold at open board at the stock exchange anybody was apt to buy them, and of course, I could not guarantee that the purchaser would re-sell them, but I would try to see if I could possibly effect the arrangement, and, to the best of my knowledge and belief, *I made arrangement with Mr. Newman.*

Q. What is the first name of Mr. Newman?

A. Isidore—Isidore Newman—by which, if he purchased

the bonds, he would sell them to me at a specified profit, which profit I do not remember either, which was, though, a small affair, of one-quarter or one-half; but *if he had not done so the thing might have fallen to the ground.* I told Mr. Forstall I could not guarantee it. Now, that is what I believe took place. I believe so. I am not sure. To the best of my recollection, *there was an agreement between Mr. Newman and myself.*

The so-called "sale" was made on May 22, 1879, at the Stock Exchange in New Orleans. And the next day the Commissioners addressed the following protest in writing to the defendants (fols. 201, 202, p. 80):

COMMISSIONERS OF THE MECHANICS' AND TRADERS' BANK (IN LIQUIDATION).

NEW ORLEANS, *May* 23, 1879.

MESSRS. E. J. FORSTALL'S SONS, AGENTS OF MESSRS. BARING BROTHERS & CO., New Orleans.

DEAR SIRS: The Commissioners of the late Mechanics' and Traders' Bank are informed that at a late hour yesterday (May 22) you caused to be sold at the New Orleans Stock Exchange the following securities belonging to the late Mechanics' and Traders' Bank, and held by you as agents of Messrs. Baring Bros. & Co., of London, viz.:

(280) Two hundred and eighty consolidated bonds of the City of New Orleans.

(54,000) Fifty-four thousand dollars of premium bonds of the City of New Orleans.

(2,400) Twenty-four hundred dollars of bonds of the State of Louisiana.

This sale having been made without notice to the Commissioners, I am instructed by them to enter their protests against said sales, reserving all rights belonging to them as liquidators of the late Mechanics' and Traders' Bank.

Yours respectfully,

(Signed) L. LA COMBE, *Chairman.*

On June 11th, 1879, the defendants, by their attorney, W. A. Gordon, addressed the following letter to the complainants (fols. 197, 198, pp. 78, 79):

30 CARONDELET STREET,
NEW ORLEANS, *June* 11*th*, 1879.

To the Liquidators of the Mechanics' and
Traders' Bank of New Orleans.

GENTLEMEN: Under instructions from Messrs. E. J. Forstall's Sons, agents, I have the honor to present you herewith an account of the disposition of the assets pledged to secure the open credit of Messrs. Baring Bros. & Co., showing a balance due, including "interest accrued thereon and all commissions, costs, and charges attending said sale," of $62,302.40, for which we make formal demand, and request that you will enter in due form on your schedule of liabilities of the bank.

You will please notice that we give you credit for the five hundred and sixty coupons which you hold still for our ac., and which constitute a part of the pledged bonds, and request you to consider this an amicable demand therefor. Very respectfully, your ob't servant,

(Signed) W. ALEX. GORDON.

And on June 13th, 1879, the complainants made the following reply (fols. 203, 204, pp. 80, 81):

COMMISSIONERS OF THE MECHANICS' AND
TRADERS' BANK (IN LIQUIDATION).
NEW ORLEANS, *June* 13, 1879.

W. ALEX. GORDON, ESQ.,
No. 30 Carondelet St., New Orleans.

DEAR SIR: Your letter of the 11th inst. has had our careful attention, and in reply beg to say that the Commissioners cannot recognize the account current of Messrs. E. J. Forstall's Sons, agents of Messrs. Baring Bros. & Co., by which they claim as due from the late Mechanics' and Traders' Bank the sum of $62,302.40.

The Commissioners claim that the said account is erroneous, and contains charges of an excessive nature, which were never contemplated in the original agreement with Messrs. Baring Bros. & Co., and are not sanctioned by the act of pledge. They claim that the disposition of the securities held by Messrs. Forstall's Sons was made without notice to them, contrary to the spirit of the pledge,

and in a manner detrimental to the interests of the late bank.

In reference to the sales of bonds and notes, the Commissioners desire to have you inform them when, to whom, and in what manner said sales were made, and in making this request they specially deny admitting the validity of said sales, and by this again affirm and renew their protest of 23d May last, addressed to Messrs. Forstall's Sons.

Yours respectfully,

(Signed) L. La Combe.
" Frank M. Hall.
" J. A. Blaffer.

In their tableau, which was filed by the commissioners, as required by law, in the suit in which the bank was declared insolvent, and they were winding up its business as officers of the court, they placed the account of the defendants among the contested claims. But the defendants were anxious to obtain a dividend on the balance due on their statement of account showing "the disposition of the assets" [*supra*]. An adjustment or compromise was accordingly executed by the parties, entitled as follows, and containing the following reservation in favor of the complainants (fol. 207, p. 82):

Agreement between the Commissioners and E. J. Forstall's Sons, under date of the 25th of August, 1879.

Fifth District Court for the Parish of Orleans.

State *ex rel.* A. V. Wogan
vs.
Mechanics' & Traders' Bank. } No. 9744.

In order that there may be no hindrance to the distribution of the funds as proposed by the commissioners of the Mechanics' and Traders' Bank in their provisional tableau filed by them, it is hereby mutually agreed between the commissioners, on the one part, and Messrs. Baring Bros. & Co., herein represented by E. J. Forstall's Sons, their agents, on the other part, that the commissioners of said bank (although the claim of Baring Bros. & Co. is placed on the tableau among the contested claims) shall pay twenty

per cent. on the sum of $49,333.34, part thereof, just as if it were placed among the registered or admitted claims, *but the said admission and payment shall in no manner prejudice the right of said commissioners in any claim or demand they may make hereafter for damages against said Baring Bros. & Co. on any account whatsoever.*

There was also a stipulation in the aforesaid agreement that it did "not apply to nor comprehend the claim of Baring Bros. & Co. for certain coupons of city consolidated bonds for which suit has been brought, No. 10,002 on the docket, Fifth District Court, parish of Orleans" (fol. 209, p. 83.)

Under this agreement, and two days after its execution, the defendants received a dividend of $9,866.66 upon their previously contested claim, which, but for this said agreement, would not have been paid without litigation. In the receipt for this amount, it is said to be paid on the "undisputed part of Messrs. Baring Brothers & Co.'s claim, as per ac. rendered," (fol. 206, p. 81), their agents in the aforesaid agreement having reduced the balance from $62,302.40 to $49,333.34, and reserved their right to insist on the validity of certain items amounting to $12,969.06, to which the commissioners had objected. As to these disputed items an agreement was reached on the 23d of February, 1880, and annexed to the aforesaid agreement of August 25, 1879 (fol. 210, p. 83), to which, still later—March 1, 1880—the following memorandum was added (fol. 209, p. 83):

The commissioners will pay the ten per cent. on the $49,333.34, and thirty per cent. on eleven hundred and sixteen $\frac{68}{100}$ dollars additional on the present account filed the 11th day of February, 1880, *under the same reservation*, excepting so far as modified by the judgment to be entered on opposition now filed.

This "opposition" was filed by the defendants in the same suit (State *ex rel.* Wogan *v.* Mechanics' & Traders' Bank), February 25, 1880, two days after the date of the the aforesaid agreement in respect to the disputed items,

(fol. 100, p. 41); and all the papers being submitted to the court, judgment was rendered as follows (fol. 101, p. 41):

Fifth District Court for the Parish of Orleans.

State of Louisiana *ex rel.* A. V. Wogan
vs.
The Mechanics' & Traders' Bank. } No. 9744.

In the matter of the opposition of Forstall's Sons, agents of Baring Bros. & Co., to the tableau of distribution filed by the commissioners herein on the 11th day of February, 1880, and the court considering the law and the evidence, and *the agreement of compromise entered into by the parties and exhibited to the court*, it is ordered, adjudged, and decreed that the opposition of Forstall's Sons, agents of Baring Bros. & Co., to said tableau be maintained so far as to allow five hundred dollars attorneys' fees instead of fifteen hundred dollars claimed in said opposition, and the sum of seventeen hundred and seventy-two $\frac{85}{100}$ dollars as commissions on $177,285.23 instead of eight thousand eight hundred and sixty-four $\frac{26}{100}$ dollars claimed, and that said two items, amounting to twenty-two hundred and seventy-two $\frac{85}{100}$ dollars, be placed on said tableau and paid as costs.

And it is further ordered, adjudged, and decreed that the items claimed by opponents, to wit, $10, $700, $67.50, $5, $1.82, $1.68, $5.36, $0.88, $1.64, $9.90, $4.17, $152.16, $16.57, and $140, aggregating the sum of $1,116.68, be placed on said tableau as an ordinary debt and paid *pro rata*.

And it is further ordered, adjudged, and decreed that said opposition in all other respects be, and is hereby, dismissed, and that said tableau as thus amended be approved and homologated, and the funds distributed in accordance therewith.

It is further ordered, adjudged, and decreed that all the rights of both the opponent and the Bank in Liquidation touching the value of 180 missing coupons, and *any damages resulting from the sale of the bonds of the Bank in pledge by said opponents, are expressly reserved.*

Judgment rendered March 3d, 1880; judgment signed March 9th, 1880.

(Signed) W. H. ROBERTS, *Judge.*

Thus, by their letter of May 23, 1879 (the day after the pretended "sale"), and by their agreement of August 25, 1879, with the defendants (including the agreement of February 23, 1880, and the supplemental note of March 1, 1880), together with the judgment of March 3, 1880, the complainants protested against the proceedings of May 22, 1879, and reserved any and all rights which were thereby infringed or thereby accrued. The complainants waived nothing and reserved everything. They acted with the utmost promptness and persistence in and out of court in opposition to "the disposition of the assets" which had been made by the defendants.

In May, 1880, the defendants, acting as the absolute owners of the pledged bonds, and taking advantage of a rise in their market value, commenced to sell them. On May 17th, 1880, they sold $50,000 in consolidated bonds (letter of Forstall's Sons to Wards, May 17, 1880, fol. 268, p. 107), and on May 20th, 1880, they sold another $50,000 of the same class (letter of Forstall's Sons to Wards, May 20, 1880, fol. 275, p. 110).

But the bonds had been specially indorsed to the Bank, (fol. 336, p. 136), and the Bank had omitted to indorse them when they were pledged to the defendants (*supra*). The purchasers of the two aforesaid lots of $50,000 claimed that the bonds were not a good delivery, and the defendants requested the commissioners to make the necessary indorsement. The commissioners applied to the court for instructions, and the following order was issued (fol. 200, p. 79):

Fifth District Court.

The State *ex rel.* A. V. Wogan
vs.
Mechanics' & Traders' Bank. } No. 9744.

On motion of Singleton & Brown and E. W. Huntington, of counsel for the Liquidators of the Mechanics' & Traders' Bank, and on suggesting to the court that certain bonds heretofore pledged to the State Auditor to secure

the circulation of said Bank, and retransferred to said Bank by the said Auditor, require the indorsement of the representatives of said Bank to bearer to make the same current and marketable, and on further showing that certain bonds, the assets of the said Bank, are in above-named condition, it is ordered that the Commissioners of Liquidation of said Mechanics' & Traders' Bank are hereby authorized and empowered to indorse over to bearer such bonds heretofore among the assets of the Bank and disposed of according to law.

(Signed) F. A. LUMINAIS, *D'y C'lk.*

Filed May 19, '80.

The defendants rely upon this indorsement (fols. 41, 42, pp. 14, 15).

The intention of the commissioners in indorsing the bonds, and the effect which should be given to the indorsement, will be considered hereafter.

From May 17th, 1880 (Forstall's letter to Wards, *supra*), the defendants continued their sales of the bonds in pledge and obtained therefor in all the sum of $123,584 (fol. 266, pp. 106, 107). This was $21,746.50 more than they brought when they were "repurchased" by the defendants in their proceedings of May 22, 1879 (Defendants' Exhibit 2, pp. 22, 23).

The fluctuations in the market price of the consolidated bonds from January 7, 1876, to March 7, 1879, appear on the Record, pp. 127 and 128; and the fluctuations in the same class from May 1, 1879, to April 14, 1882, on pages 123 and 124. The fluctuations in premium bonds from March 7, 1879, to March 3, 1882, appear on pages 128 and 129.

The suit below was brought on the 11th of May, 1882.

The foregoing facts raise the following

QUESTIONS OF LAW.

FIRST. What was the effect of the proceedings which were taken by the defendants on the 22d of May, 1879, to

dispose of the bonds in pledge? It appears from the act of pledge (*supra*) that notice was not waived, and from the answer (*supra*) and from the testimony of the defendant, Oscar Forstall (fol. 245, p. 98), that notice was not given. The purpose which Mr. Forstall so frankly avowed in the passages from his testimony already quoted, made it necessary that the sale should be sudden and secret.

Q. Why did you not notify the commissioners that the bonds were to be sold? A. That the bonds were to be sold? Q. Yes. Why did you not notify them? A. *Because I did'nt consider it was necessary.* I told them in court that I had a perfect right to sell all the collaterals, not only the bonds, but any others under the act of pledge.

The law is scrupulously careful in regard to the manner of disposing of such property, and if notice is neither waived nor expressly required in the act of pledge, the law will write it in. In view of the positive and exact requirements of the law on this subject, it might as well be argued that the pledgee could lawfully retain any surplus there might be over the debt when the security was sold, because (as in this case) there was no express provision in the pledge for payment of surplus to the pledgor, as to argue that the pledgee could sell without notice, because notice was not expressly required by the pledge (Parsons on Contracts, vol. 2, 120, and cases cited in note *t;* Stearns *v.* Marsh, 4 Denio, 227; Stevens *v.* Baker, 31 Conn., 147; Conyngham's Appeal, 57 Pa. St., 474).

The case of *Louisiana Savings Bank* v. *Bussey*, 27 La. Ann., 472, is not an authority against the general rule requiring notice unless it is expressly waived, for in that case the pledgor, himself, requested the pledgee to sell the pledge, and, under the circumstances, could not attack the sale for want of notice.

Moreover, at the "sale" of May 22, 1879, the defendants were both sellers and buyers. Only one of the parties to this transaction seems to have tried to conceal its real

character. Mr. Newman, who bought in the bonds for the defendants, contradicts Mr. Raynes, who sold them for the defendants, and claims that he (Newman) was under no obligation to sell them back again. But his testimony shows that although he did not have cash in bank sufficient to pay for them, he gave his check for them, which he said was "equivalent to money" (fols. 315, 316, pp. 125, 126). The bonds were probably never in his hands at all, and by an exchange of checks he obtained the "advance price of one-eighth per cent." mentioned in the answer (fol. 23, p. 8). The fact that the defendants were both sellers and buyers is expressly admitted in their answer to an interrogatory of the bill of complaint, thus:

No. 4. Whether Raynes & Villeré represented them (the defendants) as sellers, and Isidore Newman & Bro. represented them as purchasers (fol. 8, p. 3).

Answer to No. 4. Raynes & Villeré represented Edm. J. Forstall's Sons as sellers, and Isidore Newman & Bro. purchased the bonds with the understanding that Edm. J. Forstall's Sons would purchase them back from Isidore Newman & Bro. at an advance price of one-eighth per cent. (fol. 54, top of p. 19).

Applying the law to the facts, the sale was a nullity, and the relations of the parties remained unchanged—the title to the bonds continuing in the pledgor, with the special property and possession in the pledgee. And this indefinitely, or until the relations of the parties were lawfully changed (Middlesex Bank *v.* Minot, 4 Met., (44 Mass.,) 325; Bryan *v.* Baldwin, 52 N. Y., 232; 25 Md., 424; Michoud *v.* Girod, 4 How., 503).

SECOND. What was the legal effect of the agreement of August 25, 1879? Under that agreement, as heretofore stated, a dividend was paid by the commissioners to the Forstalls upon their alleged balance, which had been placed by the commissioners among the contested claims; and, in consideration of this concession, the defendants agreed that

such payment should "in no manner prejudice the right of said commissioners in ANY CLAIM OR DEMAND they may make hereafter for damages against said Baring Bros. & Co. ON ANY ACCOUNT WHATSOEVER" (fol. 207, p. 82). The complainants contend that in consideration of placing a portion of the balance claimed by the Barings among the admitted claims against the bank without further contest, and paying a dividend thereon, the defendants secured to the commissioners the right to enforce any remedy which the law would afford for the proceedings of May 22, 1879, against which the commissioners, as we have seen, had already protested in writing, and on account of which, as well as for other reasons, they had placed the claim of the Barings upon their list of contested claims in the legal proceedings for winding up the affairs of the bank. Different courses were open to the defendants. They could easily have met the requirements of the law and made a proper sale. But they deliberately determined to rely upon their proceedings of May 22d, 1879; and they said, substantially, to the commissioners: "You say that our sale was a nullity; we say that it makes us absolute owners of the bonds. You are contesting our claim for a balance on the basis of that sale, and refusing to pay us a dividend. You know that we are responsible, and that if you are right and we are wrong in regard to the effect of that sale you can either recover the bonds from us or collect any judgment that you may obtain against us on an accounting hereafter. Now, we are willing to agree, in writing, that you shall reserve all your rights against us if you will put our claim, or such items of it as we can agree upon, in your list of admitted claims and pay us dividends." To this the commissioners agreed, and, relying on the credit of the Barings, accepted the aforesaid reservation in lieu of continuing the contest of their claim, and involving themselves and their trust at the outset in litigation.

The complainants hold, as matter of law, that the Bar

ings, having received the benefits of the aforesaid agreement, are estopped from changing their position and taking one which is new and antagonistic; that they cannot now say that the sale of May 22d, 1879, was a nullity, and rely upon any subsequent sale made by them as absolute owners of the bonds to strangers.

Bigelow on Estoppels (1st ed.), p. 578, and cases cited, holding that "a party cannot occupy inconsistent positions, and where one has an election between several inconsistent courses of action, he will be confined to that which he first adopts." The same principle is maintained in such cases as *Morgan* v. *R. R. Co.*, 96 U. S., 720.

The defendants' contention that we have waived the rights reserved in the aforesaid agreement, will be discussed hereafter.

THIRD. To what relief are the complainants entitled if their bill is sustained by the evidence?

Regarding the "sale" of May 22, 1879, as a nullity, and nothing having been done by the complainants thereafter to change their relation to the defendant, then, in contemplation of law, the bonds are still in pledge, and the pledgors have still the right to redeem.

The prayer of the bill is as follows:

Your orators pray that the said pretended sale of the said bonds may be decreed to be absolutely null and void, and that your orators, as Commissioners of the "Mechanics' and Traders' Bank," in liquidation, may be decreed to be the owners of the bonds hereinbefore mentioned and described; and that the defendants herein, Edmund J. Forstall's Sons, as agents of Baring Bros. & Co., be ordered to return to your orators, in their said capacity, the two hundred and eighty (280) consolidated bonds of the City of New Orleans, six (6) Louisiana State 7-per-cent. bonds, and twenty-seven (27) premium bonds of the City of New Orleans, all hereinbefore fully numbered and described; and in default thereof, that the said Edmund J. Forstall's Sons, as agents of Baring Bros. & Co., be decreed to

pay to your orators the full value thereof, say *about* three hundred and thirty-six thousand four hundred dollars ($336,400), *subject to the claim of said Baring Bros. & Co. against said Bank of, say, about* one hundred and twenty thousand ($120,000.00) dollars, and that your orators may have such further and other relief in the premises as the nature of their case may require and to your Honors shall seem fit.

Thus it appears that the complaint is in the nature of a bill to redeem and for an accounting. Tender is not a prerequisite to the institution of such a suit. (Conyngham's Appeal, 57 Pa. St., 474, and cases cited). Nor would tender be a necessary preliminary, under the circumstances, if the suit were for damages for conversion; for the defendants not only having parted with the bonds about two years before the filing of the bill, but having all along insisted that the complainants' title to the bonds had been entirely devested, and that they (the defendants) had become the absolute owners of the bonds by their purchase at the "sale" of May 22, 1879, tender would have been nugatory. (Stearns *v.* Marsh, 4 Denio, 227, citing Cortelyou *v.* Lansing, 2 Cai. Cases, 200; Story's Bailments, 2d ed., 349; McLean *v.* Walker, 10 Johns., 472.)

But the form of the action does not determine the rule of damages. On this point the New York Court of Appeals held as follows:

It may be as well to remark here as anywhere, that the rule of damages should not depend upon the form of the action. In civil actions the law awards to the party injured a just indemnity for the wrong which has been done him, and no more, whether the action be in contract or tort; except in those special cases where punitory damages are allowed, the inquiry must always be, what is an adequate indemnity to the party injured, and the answer to that inquiry cannot be affected by the form of the action in which he seeks his remedy. Chancellor Kent, in delivering the opinion of the Court of Errors (Cortelyou *v.* Lansing), though the action was in *assumpsit*, seeks the rule

of damages in the principle applicable to an action for conversion. (Baker v. Drake, 53 N. Y., 220.)

If it should appear to the court, in view of the complainants' reservation of the right to claim *damages* in the aforesaid agreement of August 25th, 1879, and in view of the sales of the bonds by the defendants to strangers in May and June, 1880, that there has been a conversion—a view which is not entertained by the complainants—then by the weight of authority, the complainants are entitled to the highest value which the bonds reached in the market between their illegal sale and the filing of the bill, less the amount of the indebtedness for which they were held.

In *Cortelyou* v. *Lansing* (2 Cai. Cases, 200), Chancellor Kent observed:

The value of the chattel at the time of the conversion is not always the rule of damages in trover; if the thing be of a determinate and fixed value, it may be the rule, but where there is an uncertainty, or fluctuations attending the value, and the chattel *afterwards rises in value*, the plaintiff can only be indemnified by giving him the price of it at the time he calls upon the defendant to restore it, and one of the cases even carries the value down to the time of the trial. The cases of *Fisher* v. *Prince*, (3 Burr, 1363; 2 Black. Reps., 902; see, also, 6 Durnf., 696), and of the *Administrator of Hunt* v. *Fuller*, have long since settled that if the chattel after the conversion increased in value, or be attended with other circumstances, the damages may be enhanced accordingly.

See, also, Sedgwick on Damages, 2d ed., pp. 260 *et seq.*, where the cases are reviewed, and the following conclusion stated:

But a different case is presented where the purchaser has paid the price in advance, or has otherwise, as by the transfer of stocks, been deprived of the use of his property; and here it has been insisted that the purchaser is not to be limited to the value of the article at the time of delivery, but shall have *the advantage of any rise in the market value of the article which may have taken place up to the time of the*

trial; and on this point different and conflicting decisions have been made. In England and New York the latter rule is laid down upon the ground that the purchaser, having been deprived of the use of his property, is entitled to *the best price he could have obtained for the article up to* the time of the settlement of the question. * * *

In a later case in the King's Bench (Shepherd, Ex'r, &c, *v.* Johnson, 2 East., 211) a writ of inquiry was issued to assess damages on a bond given by the defendant, conditioned to replace, on the 1st of August, 1799, a quantity of stocks lent him by the testator, the only question was whether the damages should be calculated at the price of the stock on the 1st of August, or *at the price on the day of trial*, and the latter sum was held the true rule of damages. (See also Donner *v.* Back, 1 Starkie, 318; McArthur *v.* Seaforth, 2 Taunt., 254; Harrington *v.* Harrington, 1 Car. & P., 412; West *v.* Wentworth, 3 Cowen, 82; Clark *v.* Pinney, 7 Cowen, 681; Wilson *v.* Little, 2 N. Y., 443; Romaine *v.* Van Allen, 26 N. Y., 309; Markham *v.* Jaudon, 41 N. Y., 245, modified as to the fixed and unqualified nature of the rule of damages in conversion by Baker *v.* Drake, 53 N. Y., 211; Colt *v.* Owens, 90 N. Y., 368; Conyngham's Appeal, 57 Pa. St., 474.)

The New York Court of Appeals refused to apply the foregoing rule of damages in the case of *Baker* v. *Drake* (53 N. Y., 211), where a broker who was carrying a heavy load of stocks for a speculator on a very slight margin, sold him out without legal notice. At the time of the sale he had an interest of a few hundred dollars in stocks that had cost the broker nearly seventy thousand. And the court took the view that not having paid for the stocks, the speculator-plaintiff might be regarded as having the money with which to replace them, and that all the damages to which he was entitled was the difference between what they would have cost him within a reasonable time after their conversion, and the price at which they were illegally sold by the broker. And the court distinguishes that case from the case of *Romaine* v. *Allen*, 26 N. Y., 309, which is closely analogous to the case at bar, and in which

the rule as laid down by Chancellor Kent (*supra*) was applied. It also appears that when the case of *Baker* v. *Drake* came again before the court (66 N. Y., 518), two of the learned Justices dissented from the propositions that "the relation of broker and customer, under the ordinary contract for a speculative purchase of stock, is that of pledgee and pledgor;" and that "a sale of the stock by the broker under such contract without notice to the customer of the time and place of sale is a conversion." And the same court subsequently held (90 N. Y., 371), referring to the same case of Baker *v.* Drake (*supra*), that—

> In the case cited it is laid down that *where the stocks have been paid for and are owned by the person for whom they are purchased*, different considerations would arise (53 N. Y., 217), and that it is unreasonable to require him to pay it the second time, and therefore all fluctuation in price should be at the risk of the vendor who refuses to deliver while retaining the purchase-money (*Id.*, 223).

Assignments of Error.

The court below dismissed the complainants' bill without rendering an opinion.

The complainants assign the following errors:

I. The court erred in not holding that the sale of May 22, 1879, was a nullity, and that the relation of pledgor and pledgee still subsisted between the parties when the suit was brought.

II. The court erred in not holding that the agreements of August 25th, 1879, February 23d and March 1st, 1880, taken together, reserved to the complainants all their rights under the act of pledge, unaffected by the proceedings of May 22, 1879, in case those proceedings should be held to be illegal when tested by the complainants under the aforesaid reservation.

III. The court erred in not holding that the reservation secured by the aforesaid agreements (and secured also ex-

pressly in the judgment of March 3d, 1880), was limited in point of time of enforcement, on the part of the complainants, by nothing but the statute of limitations, and, if enforced within the period so prescribed by the laws of Louisiana, was free from the question of laches.

IV. The court erred in not holding that the indorsement of the bonds by the complainants in May, 1880, was made upon faith of the said agreements and judgment, and of the reservations therein contained, and for the purpose of making good and valid in law the original pledge of the said bonds, which was made, or intended to be made, by the Mechanics' & Traders' Bank to the defendants in the year 1876, and not as a ratification of the acts of the defendants in respect to their disposition of the said bonds, or any of them.

V. Even if the court found that the sale of May 22, 1879, was a nullity, and that the relation of pledgor and pledgee continued unaffected thereby, and also found that the sales of May and June, 1880, were rightfully made in execution of "the act of pledge," or that they were ratified by the complainants, or that the complainants were estopped from assailing them, then the court erred in not rendering a decree in favor of the complainants for the excess of the proceeds of those sales over the amount credited on the 22d of May, 1879, by the defendants on their account with the complainants.

VI. The court erred in not holding that the defendants (having chosen to rely upon their proceedings of May 22d, 1879, as a proper and final execution of "the act of pledge," and having granted to the complainants, for a valuable consideration, the right to test the legality of that sale and recover damages if it should be held illegal) were estopped from resorting to the sales of May and June, 1880, as having been made under and in execution of the aforesaid "act of pledge," unless the conduct of the complainants in respect to those subsequent sales unmistakably

implied and could be interpreted in no other way than as a ratification.

VII. If the court found that the "sale" of May 22, 1879, was a nullity, and the rights of the parties as pledgor and pledgee remained unaffected thereby, then the court erred in not holding that the sales to strangers in May and June, 1880, were illegal under the act of pledge, as being made without notice to the commissioners of the bank, specifying the time and place of said sales.

VIII. If the court found that the "sale" of May 22, 1879, was a nullity, and the rights of the parties as pledgor and pledgee remained unaffected thereby, and that the sales to strangers in May and June, 1880, were illegal, and that the complainants had not ratified either of said sales, and were not otherwise estopped from claiming damages for the conversion, then the court erred in not awarding to complainants, as damages (in view of the defendants' inability to return the bonds) the highest price of the said bonds in the market between their conversion and the filing of the bill, subject to the unsatisfied claim of the Barings against the Bank.

IX. The court erred in not finding from all the evidence in the case that the complainants were entitled to an accounting with the defendants on the basis of charging the defendants with the market value of the bonds embraced in the pledge as such value was at the commencement of this action.

X. The court erred in not rendering a decree for the complainants as prayed for in their bill.

ARGUMENT.

The points relied upon by the defendants remain to be considered. It is claimed in the Answer (fol. 54, p. 18) that this suit is one of the kind, which, under the laws of Louisiana, must be brought within one year. The actions so prescribed are to be found in the Revised Civil Code

of Louisiana, 1870, §§ 3534–3537. But the only one of those enumerated which at all resembles any possible phase of the case at bar is "that * * * resulting from offenses or *quasi* offenses" (§ 3536). It is obvious, and the Louisiana authorities hold, that this does not cover, and, indeed, that it fails to touch, such a suit as complainants' (Levasseur *v.* Gardner & Co., 34 La. Ann., 264; McKnight *v.* Calhoun *et al.*, 36 La. Ann., 408–411).

On the complainants' theory that the sale of May 22, 1879, was a nullity, and that, in contemplation of law, the defendants still hold the bonds subject to the complainants' right of redemption, the suit is not for an offense or a *quasi* offense, but is essentially *ex contractu*—the contract being the original "act of pledge," which is still subsisting between the parties. And even if this suit were regarded as one for *damages*, it would not be within the prescription of one year. (Lallande *v.* Ball, 20 La. Ann., 193.)

The section of the Louisiana Code which seems to cover the present suit reads as follows:

ART. 3542. [3507]. The following actions are prescribed by *five* years: That for the *nullity* or rescission of contracts, testaments, or *other acts*.

But if the limitation is not five years, it is ten years, under Art. 3544, providing that "in general all personal actions except those before enumerated are prescribed by ten years."

The defendants claim that the complainants have been guilty of laches (fol. 49, p. 17), but the fact is that the commissioners acted with the utmost promptness in contesting the question with the Forstalls whether the "sale" of May 22, 1879, was valid. The commissioners not only protested the next day against that "sale," in writing (*supra*, p. 7), but in the same suit in which the bank was declared insolvent, and its affairs were being wound up, the commissioners filed a "tableau," on which the Forstalls' claim, based by them on the aforesaid "sale," was placed among the claims *contested*. On this question of the "sale," the

commissioners took the Forstalls into court immediately. But the Forstalls said: "No; pay us dividends, and we will reduce our claim, and agree that you may contest the validity of the sale hereafter." Then came the agreement of August 25, 1879, and it is to be noted that the reservation of the right therein contained was not limited as to its enforcement in point of time except by the statute. This reservation was obtained for a valuable consideration. The complainants withdrew their objection to the claim of the defendants against the bank, and paid them dividends, in consideration of which withdrawal and payments; the defendants ceded to the complainants the right to test thereafter the validity of the "sale" of May 22, 1879, in regard to which there was an irreconcilable difference of opinion between the parties. When that reservation was so secured, it was not only the right but the duty of the commissioners to use it for the best possible advantage of *all* the creditors of the bank. The commissioners believed that the relation of pledgor and pledgee had not been affected by the simulated and fraudulent "sale" of May 22, 1879, and that, in contemplation of law, the right to redeem the bonds continued. This appears from the testimony of Commissioner Stafford, who was examined as a witness on behalf of the *defendants:*

Q. Mr. Stafford, you reserved your rights, you say, to bring this suit; don't you mean a suit for damages against Baring Bros. & Co.?

A. I mean a suit for a recovery of the value of the bonds, or the bonds themselves (fol. 222, p. 89).

This reservation was an asset of the bank, and the commissioners, as trustees, were bound to administer it wisely. The time it had to run was of the essence of its value. Litigation was in progress which might result in greatly enhancing and permanently establishing the value of the bonds. The commissioners believed that they had obtained, by their agreement with the defendants, all that

could have been gained by a sequestration of the bonds, if the validity of the original pledge had been successfully assailed (*supra*, pp. 4 and 5), or by a continuance of the contest of the claim in the legal proceedings for winding up the affairs of the bank. By that agreement the commissioners were entitled to call upon the Forstalls, as agents of the Barings, for an accounting, if it should be held, when the rights therein reserved were finally exercised, that the "sale" of May 22, 1879, was a nullity, and that the bonds, in contemplation of law, were still subject to redemption. This was—to the commissioners—the meaning of the so-called "compromise," and this explains their action on another point which is presented by the defendants as of the utmost importance—that is, the indorsement of the bonds on the 20th of May, 1880, by the complainants (Answer, fol. 36, p. 13).

It appears conclusively from their testimony that the commissioners had no intention of waiving the rights which they had so carefully and persistently reserved, by indorsing the bonds, and enabling the Forstalls, in whose hands they were, and who had already sold a large portion of them (*supra*, pp. 12 and 13) to make a good delivery. Under the "compromise," the commissioners were not depending on the bonds, but on the personal responsibility and credit of the defendants, and on the right to hold them responsible thereafter for their conduct. Apart from the claim which the Forstalls could make, that the bonds should be indorsed in furtherance of the original "act of pledge," so that it should thereby be made as good and valid in law as it was doubtless intended to be when the bank delivered the collaterals in 1876, the commissioners could as safely and properly make the indorsement under the "compromise" as they could pay dividends on the Forstalls' claim against the bank. The commissioners had recently paid a second dividend to the Forstalls, and nobody seems to have thought that such payments, which, but for the

reservation in the "compromise," might have ratified the simulated sale of May 22, 1879, had any such effect. The "compromise" required that the Forstalls should be recognized as the absolute owners of the bonds, subject only to the rights thereby reserved to the complainants to test the question whether the bonds were not, in contemplation of law, still held in pledge, and to be accounted for by the defendants. So, when Mr. Forstall requested Commissioner Lacombe to indorse the bonds "on the strength of our compromise," and "to give us the transfer which would enable us to sell these bonds," Mr. Lacombe said, "Well, that's all right; but you know, Oscar, we will have to get the order from the court." It was the agreement of August 25, 1879, with its supplements of February 23 and March 1, 1880, incorporated into and sanctioned by the judgment of March 3–9, 1880, that Commissioner Lacombe understood by the "compromise." And such seems to have been the understanding of Mr. Forstall himself, although an attempt has been made in the Answer (fols. 26 *et seq.*, pp. 9–11) to separate the memorandum of February 23, 1880, from the original agreement, to which it was merely a supplement, and to set it up as a separate instrument by which the rights, that the complainants had previously reserved, were surrendered. The following ex-extract from his examination shows that Mr. Forstall understood that the two instruments were to be taken together, just as they appear on pages 82 and 83 of the Record:

Q. Mr. Forstall, you have spoken of a compromise. Was that compromise in writing?

A. Yes, sir.

Q. Is it any of these agreements that I have submitted to you? What do you mean by your compromise? You have spoken of a compromise.

A. It is an agreement.

Q. You speak of a compromise; are you alluding to the agreements of February 23, 1880, and of the 25th of August, 1879? Is that what you mean by the compromise?

A. Yes, sir (fol. 241, pp. 96, 97).

The memorandum of March 1, 1880, written upon the original agreement of August 25, 1879 (*supra*, p. 10), shows conclusively that none of the parties had any idea or intention that the rights reserved in that agreement should be in any way affected by the supplement of February 23, 1880, which simply recorded a liquidation of certain items enumerated in the original of August 25, 1879, and by it reserved for subsequent adjustment. Upon the internal evidence that these two instruments were connected as aforesaid, and upon reading the memorandum of March 1, 1880, which was indorsed upon the original of August 25, 1879, the court could not have failed to include the reservation in the judgment of March 3–9, 1880 (*supra*, p. 11), without refusing to give effect to the acts of the parties.

The commissioners were advised by their counsel that they could indorse the bonds without affecting the rights reserved in the "compromise." And each commissioner testified that he had no intention of surrendering any of the rights reserved, or any idea that he was making such a surrender, by indorsing the bonds. On this point the *defendants'* witness, Commissioner Stafford, is just as clear and emphatic as he is in regard to the nature of the reservation. The following is from his cross-examination (fols. 221, 222, 223, pp. 88, 89):

Q. Mr. Stafford, when you indorsed these bonds, did you not understand that you were doing it without prejudice to your rights against Messrs. Baring Bros., or any claim that you might have?

A. *Certainly.*

* * * * * * *

Q. You always, as a commissioner, reserved the right to bring this suit?

A. *Yes, sir; always.*

Q. Did you reserve this right by the advice of your attorney?

A. *Yes, sir.*

Q. Have you in any manner waived your right to bring this suit?

A. *No, sir.*

Re-direct examination by Mr. DENIS:

Q. Mr. Stafford, you reserved your rights, you say, to bring *this* suit; don't you mean a suit for *damages* against Baring Bros. & Co.?

A. *I mean a suit for the recovery of the value of the bonds, or the bonds themselves.*

The testimony of Commissioner Hall in regard to his intention in indorsing the bonds is to be found in the Record, fols. 176, 181, 182, pp. 70, 72; and Commissioner Lacombe's, fols. 150, 152, 156, pp. 60, 61, 62. It also appears that, *after the indorsement*, Commissioner Lacombe, on several occasions, said to Mr. Forstall that the commissioners still regarded the Forstall Sons "as responsible for having sold these bonds" (fol. 261, p. 104); that is, for whatever rights remained unforeclosed by the so-called "sale" of May 25, 1879, as provided in the "compromise." (See also fols. 241, 242, 243, pp. 96, 97.)

It is clear to a demonstration that the Forstalls did not sell the bonds in May and June, 1880, in reliance upon the commissioners' indorsement, but as their own absolute property, for, by their letter of May 17, 1880, to the Wards (three days before the indorsement), it appears that they had already "sold fifty thousand city consols at 37" (fol. 270, p. 108). And it is equally clear that the commissioners did not volunteer to indorse the bonds. The indorsement was made at the solicitation of the defendants, and if they desired that it should operate as a waiver of any subsisting right, they should have said so. The indorsement could have been granted on either one of two grounds: (1) that the pledgees were entitled to it under the original "act of pledge," and that the bank before its failure would undoubtedly, on application of the pledgees, have performed the act; or (2), that under the agreement or "compromise" of August 25, 1879, and the judgment

of March 3–9, 1880, the commissioners could make the indorsement, as they had paid, and were intending to pay, dividends, without prejudice to the right of suit which had been expressly reserved. Thus it appears that the act of indorsement lacks the necessary elements of an estoppel, or of a ratification of the sales of May and June, 1880. (Henshaw *v.* Bissell, 18 Wall., 255; Brant *v.* Virginia Coal and Iron Co., 93 U. S., 326; Phila., W. & B. R. R. Co. *v.* Dubois, 12 Wall., 47; Wilcox *v.* Howell, 44 N. Y., 398.)

The claim in the Answer that there was any delivery of the bonds by the commissioners to the defendants when the indorsement was made, is scarcely worthy of notice. The commissioners indorsed the bonds in the defendants' office, and the bonds were never out of the defendants' possession (fol. 150, p. 60).

Nor is the contention of the defendants, that the bonds rose unexpectedly and suddenly in value, supported by the evidence. The defendants' exhibits on pp. 123 and 124 of the Record show that from January 30, 1880, to December 30, 1881, the consolidated city bonds had risen, by gradual and steady steps, from 31 to 82½. And it was not until the following April (1882) that the decision of the Supreme Court of the United States in *State of Louisiana* v. *Pilsbury, Mayor*, &c., 105 U. S., 278, was rendered, which decision is doubtless the "event" alluded to in the Answer (fol. 48, p. 16) as "not previously foreseen or expected by any of the parties hereto." (See also fol. 152, p. 61; fol. 183, p. 73). It also appears from the letters of the defendants (pages 107–112) that in May, 1880, they were aware of pending litigation in regard to the bonds, and rather inclined to the opinion that they would enhance in value.

The defendants' contention (Answer, fols. 25, 26, pp. 9, 10), that all the rights which the complainants had reserved in the agreement of August 25, 1879, were surrendered by the agreement of February 23, 1880, has already been answered by showing that the latter agreement (which was

introduced by the defendants twice—once separately as Exhibit 10, p. 42, and again in connection with the original agreement and the memorandum of March 1, 1880, pp. 82, 83)—was not an independent instrument, but merely a memorandum of what had been done by the parties in regard to certain items enumerated as still unsettled in the original agreement. These items undoubtedly belonged to the Forstalls' account, which was based on the "sale" of May 22, 1879, and included a charge of 5 per cent. for selling the bonds. It is also undisputed that when that charge was reduced by the Forstalls to 1 per cent., it was added to the uncontested part of the claim, and dividends paid upon it; but this was done without prejudice to the rights, which, *in view of that very adjustment*, had been reserved by the original agreement or "compromise" of August 25, 1879. If the two instruments taken together do not show clearly that this was their meaning, then the *later indorsement of March* 1, 1880, *expressly continuing the "same reservation,"* removes all doubt, and shows how hard pressed the defendants must be when they claim in their answer (fol. 34, p. 12) that the aforesaid reservation was inserted in the judgment of March 3–9, 1880, by mistake or inadvertence.

In their Answer (fol. 50, p. 17) the defendants set up the judgment which was rendered on the 17th of May, 1880, in their suit against the complainants for 560 coupons, as a bar to the present action. But the only thing decided in that judgment (fol. 98, p. 40) was that the Forstalls having delivered the coupons for collection to the Bank several years *before its failure*, (and therefore long prior to the "sale" of May 22, 1879), had a valid claim against the assets of the Bank in the hands of the commissioners for so many of the coupons as had not been returned. See Bigelow on Estoppels, p. 22, citing *Woodgate v. Fleet*, 44 N. Y., 1. The petition in the coupon suit was filed on the 12th of June (fol. 77, p. 30), and the answer on the 10th of November,

1879, (fol. 86, p. 33). The petition set up the "sale" of May 22, 1879, not as a source of title to the coupons for which the suit was brought, but to give point to the allegation that the lack of the coupons prevented "due delivery of said bonds." The answer alleged that only 380 of the missing coupons had ever come into the commissioners' possession, and that these had been delivered to the sheriff under the writ of sequestration which had issued on the prayer of the petitioners. The commissioners also pleaded the defects of the "sale" of May 22, 1879, and, in conformity with the agreement or "compromise" of August 25, 1879, *which had been executed by the parties between the filing of the petition and the answer in that suit for the coupons*, the commissioners reserved "their right *to sue the plaintiffs* (Forstall's Sons) for said loss, damage, and injury *in a separate suit hereafter*." The very issue, therefore, which the defendants now say was decided by the judgment in the coupon suit was taken out of it by a written agreement between the parties for a valuable consideration, *pendente lite*, and expressly reserved for future decision.

The conclusion seems inevitable that nothing has been done by the complainants to extinguish or impair the right which they secured by agreement with the defendants to bring this suit; and therefore the decree dismissing the bill should be reversed, with costs, and an accounting ordered in accordance with the prayer of the bill.

CRAMMOND KENNEDY,
W. S. PARKERSON,
Of Counsel for Appellants.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.
No. 347.

OCTOBER TERM, 1887.
No. 69.

LEOPOLD LACOMBE AND OTHERS, COMMISSIONERS OF THE MECHANICS' AND TRADERS' BANK,

Appellants,

vs.

EDMOND I. FORSTALL'S SONS, AS AGENTS OF BARING BROTHERS & CO.,

Appellees.

BRIEF FOR APPELLEES.

JOSEPH H. CHOATE,
Of Counsel.

Supreme Court of the United States.

LEOPOLD LACOMBE AND OTHERS, COMMISSIONERS in Liquidation of THE MECHANICS' AND TRADERS' BANK, *Appellants*,	No. 347. October Term, 1886.
vs.	
EDMOND I. FORSTALL'S SONS, as Agents of BARING BROTHERS & Co., *Appellees.*	No. 69. October Term, 1887.

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR APPELLEES.

STATEMENT.

The suit was commenced in the Circuit Court in May, 1882, by the Commissioners in liquidation of The Mechanics' and Traders' Bank, an insolvent bank of the City of New Orleans, against Edmond I. Forstall's Sons, as agents of Baring Brothers & Co., bankers, of London, in England,

claiming the return of certain securities, consisting of $280,000 New Orleans City Consolidated Bonds; $2,400 Louisiana State Bonds and $54,000 New Orleans City Premium Bonds, which had been pledged by the bank to the Barings as collateral security for all indebtedness of the bank to arise by reason of a continuing open credit for forty thousand pounds sterling, granted to it by the Barings, by the terms of which pledge, the securities were deposited with Forstall's Sons, as the agents of the Barings at New Orleans, with authority to the Forstalls, in case of non-payment by the bank, to sell the pledged securities at public or private sale at their option, and apply the net proceeds to or towards payment of the indebtedness.

The bill of complaint alleges that the pledge was made in March, 1876; that the bank became insolvent in March, 1879, and was so legally adjudged, and the complainants were appointed Commissioners in liquidation to wind up its affairs; that on or about 22d May, 1879, the Forstalls as agents of the Barings, fraudulently made a pretended sale of the bonds in question; that it was a private sale, without notice, made contrary to the custom and usage in New Orleans, and to the terms of the pledge and against law and equity; and was, moreover, a sham sale, the alleged purchasers being really the agents of the sellers, and was fraudulent; that on the next day the complainants formally protested against the sale; that thereafter, on or about March 3, 1880, their rights "to sue for said bonds, and any damage that might arise from said illegal sale" were expressly reserved in an agreement and settlement with said Edmond J. Forstall's Sons, as agents of Baring Brothers & Co., and that on 3d March, 1880, their rights so to sue were expressly reserved in a certain judgment of the Fifth District Court in New Orleans; that at the time of the commencement of this suit, the bonds in question were fully worth $336,000, and that after paying the claim of the Barings, there would be a balance of more than two hundred thousand dollars.

Upon the case thus alleged, the bill prays that the Forstalls, as agents of the Barings, be adjudged to return to the complainants the pledged bonds in question; or, in default of such return, to pay to the complainants the full

value thereof, "say about $336,400," subject to the claim of Baring Brothers & Co. against said bank, of "say about $120,000."

The suit is in substance and effect against Baring Brothers & Co., the alleged causes of action and the relief prayed being against them as the real defendants, and not against the Forstalls, and it was brought in this form, naming the Forstalls as their agents, under a peculiarity of the Louisiana practice.

The Barings appeared through the Forstalls as their agents, and defended the suit as one against themselves. The answer was filed by—

> "these defendants, Oscar J. Forstall and Ernest L. "Forstall, composing the firm of Edmond I. For- "stall's & Sons, as agents of the firm of Baring "Brothers, which firm is composed of Russell Stur- "gis, Edward Charles Baring, James Stewart "Hodgson, Henry Bingham Mildway, Charles Loyd "Norman and Thomas Charles Baring, all of whom "are aliens and subjects of the Queen of Great "Britain and Ireland, and reside in England, and "carry on business as partners in the City of Lon- "don, in England, under the firm name of Baring "Brothers & Co., *appearing herein for and on behalf "of their said principals, and filing this as the an- "swer of Baring Brothers & Co., through them as "such agents*" (Record, fo. 15, page 6). And the "replication to this answer expressly treats it as the "answer of the Barings, and settles the suit as "being against them as defendants (*Record, page* "43).

This answer sets up the original written pledge of the securities in question dated March 11, 1876, to secure the credit of £40,000, and annexes by way of schedule (Record, fo. 58 to 63, pages 20 to 22) a copy of it, embracing a list of the securities pledged. This list includes the $280,000 New Orleans City Consolidated Bonds and $2,400 Louisiana State Bonds, now in question. It does not include the $54,000 premium bonds, but does include certain other New Orleans City bonds, aggregating the same amount, viz., $30,000, $14,-

000 and $1,000, issued to Jackson R. R.; $5,000 issued to Opelousas R. R., and $3,000 and $1,000 described merely as New Orleans City bonds, which other kinds were, on June 19, 1877, withdrawn by the bank, and the $54,000 New Orleans City Premium Bonds, now in question, substituted and put under the pledge in their place (*Record, fo.* 57, *page* 20). By the terms of the pledge it was—

> "*agreed* that in the event of the non-payment of
> "the amount due as above stated, Edm. J. Forstall's
> "Sons are hereby authorized, as agents of Messrs.
> "Baring Bros. & Co. and of the bank, to cause said
> "pledged property to be *disposed of for cash, at*
> "*public or private sale, at the option* of said Edm.
> "J. Forstall's Sons, and the proceeds of said sale
> "shall be applied to the payment of the amount
> "due as aforesaid, with interest accrued thereon,
> "and all commissions, costs and charges attending
> "said sale, the obligation of the bank for any bal-
> "ance that may be left uncovered by the proceeds
> "of said sale remaining in full force."

By reference to the schedule, made up by the bank and annexed to the act of pledge, it will be seen that at that time the MARKET VALUE of the $280,000 New Orleans City CONSOLIDATED BONDS WAS ONLY FORTY PER CENT. OF THEIR FACE, and that of the $2,400 Louisiana State Bonds, only seventy per cent. The market value of the *other* New Orleans City bonds originally pledged, was only thirty per cent., and in the bank's letter of June 19, 1877 (Record, fo. 57), accompanying the substitution of other securities for them, the substituted $54,000 of New Orleans City Premium Bonds were valued at the like rate of THIRTY PER CENT.

The originals of these documents, copies of which are annexed to the answer from fo. 57 to 63, were given in evidence upon the trial (*Record, fo.* 110).

The answer puts in issue the allegations of the bill in relation to the sale of the bonds made on 22d May, 1879, but admits that when that sale was about to be made at the New Orleans Stock Exchange, the brokers conducting it were instructed to offer privately, to persons who would bid, to buy back from them the bonds they might pur-

chase at an advance of one-eighth of one per cent. upon the price paid, which was accordingly done, and the bonds were so bought back by the Forstalls as agents for the Barings.

It alleges that this offer was made for the purpose of promoting competition, and in order that the bonds might bring their full market value at the time, as they did, and that this course was pursued fairly and for the protection of the interest of all concerned, because the bonds would have been sacrificed and sold for much less than they did, if they had been thrown on the market without such precaution; that there was a special occasion for making sale of the bonds under the pledge, in order that the proceeds might be carried to the credit of the account and a balance struck, on which the Barings might claim their dividend from the general assets of the insolvent bank, and that said transactions of sale and repurchase was not entered into with any view of speculation, or probable profit at the expense of the bank or its representatives, by means of anticipated future advance in price or value of the bonds (Record, fo. 22 to 24).

The prices of this sale were: Of the consolidated bonds, 31½ per cent. (except $14,000 of a particular issue, which brought only 28 per cent.); of the premium bonds, 25¾ per cent., and of the State bonds, 49¾ per cent.; the whole amount of price being $102,610; deducting from which the brokerage of $772.50, left $101,837.50, as net proceeds (Record, fo. 63-64, pages 22, 23), which amount was credited by the Barings to the bank, under date of May 22, 1879, in the three items of $87,010, $13,837.50, and $990, in the account appearing on page 39 of the Record, which account shows an ultimate net balance *over all credits*, in favor of the Barings, of $62,302.40, due as cash June 4, 1879 (page 38 of Record).

Certain items in this account were disputed by the Commissioners of the bank, and by a liquidation and settlement of accounts, agreed upon between the parties, the balance of $62,302.40 was reduced by agreement to $49,333.34, for which latter amount, as balance over and above realization of the collateral securities, the Barings were recognized as general or unsecured creditors, and

were paid the dividends aggregating thirty per cent. in favor of such creditors, amounting to $14,800 (Record, fo. 160, 161, page 64; fo. 206 to 209, pages 82-3), deducting which from the $49,333.34, left an ultimate balance in favor of the Barings of $34,533.34, upon the basis of crediting the pledged bonds at the prices of the sale of May 22, 1879.

The answer further states that the bonds which were bought back upon the sale of May, 1879, were afterwards, in May and June, 1880, duly and regularly sold to strangers, by the Forstalls, as agents for the Barings, for the prices stated in the exhibit annexed to the answer, which were the full and fair value, and the best and utmost prices that could be obtained (*Record, fo. 37-8, page 13*). The prices obtained upon these sales, as shown by the exhibit (Record, fo. 64, page 23), were: For the consolidated bonds, 37 to 37⅞ per cent. (except the $14,000, which brought only 30 p. c.); for the premium bonds, 32⅞ to 33⅛ p. c., and for the State bonds, 43½ to 44¾ p. c., producing the aggregate sum of $123,584, showing an apparent excess of $21,746.50 over the amount credited on the basis of the sales of May 22, 1879. But if the two sales are to be compared, for the purpose of crediting in the account the excess of the one over the other, allowance must of course be made for the interest on the amount of the earlier credit up to the time of the later sale to strangers, inasmuch as the city was in default, paying no current interest, and the later sale included all the accrued interest in arrear. This period, from May 22, 1879, to the time of the actual sales to strangers, was a little over one year, but we will call the allowance for it, one year's interest at 6 p. c., on $101,837.50, being $6,110.25; deducting which amount from the before stated sum of $21,746.50, leaves $15,636.25, as the actual excess of the second sale over the first.

Deducting this sum of excess from the before stated ultimate balance of $34,533.34, appearing upon the basis of crediting the bonds at the prices of the sales of May 22, 1879, shows an ultimate balance in favor of the Barings of $18,897.04, upon the basis of crediting the bonds at the price actually obtained for them upon their final sale, and giving all other credits for realization of securities and for all other payments; and this sum of $18,897.09, with in-

terest on it from 1880, is the amount of the actual loss of the Barings upon the entire transaction, by reason of their sterling credit granted to this bank.

The testimony, verifying the account of the sale of May, 1879, and that the prices were the full market values at that time, is at *fo.* 291 to 296, *pages* 116 to 118, and *fo.* 308–9, *pages* 122–3, *of the Record.*

Similar testimony as to the sales of May and June 1880, is at *fo.* 301 to 303, *page* 120; *fo.* 266, *pages* 106–7; *fo.* 267 to 280, *pages* 107 to 112, and that after those sales neither Barings nor Forstall had any interest whatever in the bonds (*fol.* 240, *page* 96).

The answer alleges that at the time of the failure of the bank the amount of the debt to the Barings secured by the pledge was $227,269.09, and that soon afterwards, and before the sale of May, 1879, the account was rendered to the Commissioners and payment demanded and refused (*fo.* 20, *p.* 7 and 8. The account showing this balance, *in sterling,* £46,618 17 10, is on pages 138 to 143, and the admission made at the trial that the whole of this balance resulted from the open credit secured by the pledge, is at *fol.* 326, *page* 131. The account, starting with this sterling balance, converted into $227,267.09, United States currency, and showing the various credits from collections and realizations of securities, including the credit for price of the bonds at the sale of May 22, 1879, and resulting in the before mentioned balance of $62,302.49, as claimed by Barings, as cash, June 4, 1879, is on *pages* 36 *to* 39. Evidence relating to the presentation of the original account, showing the balance of $227,267.09, to the Commissioners, by Mr. Gordon, the attorney for the Barings, will be found at *fol.* 227, *page* 91; *fol.* 254–'5, *pages* 101–'2; *fo.* 133–'4, *page* 54, *of Record,* and testimony that on the morning of 22d May, 1879, and before the sale made on that day, Forstall, in a conversation with one of the Commissioners, treated them as in default, and announced that he intended to sell the bonds, is at *fol.* 235, *page* 94, *of Record.*

The answer alleges, that at all times from the failure of the bank until after the time of the actual sale of the bonds,

made in May and June, 1880, it was indisputable, and was well known to and understood by all the parties, that the entire value of the securities and assets embraced in the pledge was much less than the indebtedness for which they stood pledged, and that the Commissioners had no motive for redeeming, or attempting to redeem the bonds, and never had, nor professed to have, any intention of so doing, and that they had no means or funds for such purpose, if redemption had been desirable, and that after the sale of May 22, 1879, the prices of the bonds still further declined (*fol.* 31 to 33, *pages* 11, 12).

That this was the situation is fully established by the evidence.

The figures before given show that upon the basis of crediting these bonds at the prices of the sales of May and June, 1880, there was a very considerable uncovered balance of the debt, after exhausting all the securities.

But those prices were materially higher than those which had prevailed up to within a very short time previous. Those sales of the consolidated bonds (except the $14,000, as to which there was a difficulty preventing the obtaining of the regular price) were at 37 to 38 p. c., the larger portion ($166,000) being sold at 37⅞ p. c.

By reference to the schedules of market prices, it will be seen that the prices of consolidated bonds ranged as follows:—in Feb. and March, 1879, from 28¼ to 30, p. c.—*page* 128 *of Record*—from May to Dec., 1879, from 28½ to 32¼ p. c.; in Jan'y and February, 1880, from 31 to 32½, p. c.; in March, 1880, 35 p. c.; in April, 1880, from 33¾ to 38½, p. c., and in May, 1880, from 36½ to 39 p. c., the latter price being subsequent to these sales, *page* 123 *of Record*. So that, up to the time of the actual sale made of these bonds in 1880, 38½ was the highest point which had been reached, and prices had fallen away somewhat from that.

The price at which these premium bonds were sold on June 3, 1880, was 32⅝ to 33⅛ p. c. By reference to the schedule of market prices of these bonds, *pages* 128–9, it will be seen that the highest price they touched, between March 7, 1879, and the close of that year, was 29⅝ p. c. That in 1880, up to June 4; the highest price reached was

35 on April 2, but by May 7, the price had fallen away to 28¼ p. c.

It is quite apparent that when the Barings made the sales of May and June, 1880, they did so in order to take advantage of the rise in prices which took place about that time, and that they deemed it an act of prudence to close out the sales of these speculative and very questionable securities at those prices, although doing so left them as losers of a considerable amount, in their balance of account, for which there was no remaining security and no hope of recovering more than a very small percentage of it by any dividend from the insolvent bank.

And the foregoing statements show it to be indisputable, that if the Commissioners had undertaken to redeem this pledge, they would have been obliged, in doing so, to pay to the Barings in cash, a sum largely exceeding the value of all the securities redeemed. If they had provided this deficiency by application of the other assets of the bank in their hands, it would have been a breach of trust and duty on their part—in effect, a voluntary payment to the Barings of the unsecured portion of their debt, out of the fund properly distributable *pro rata* among the general creditors, whose dividends (without such diversion of funds) have amounted to only thirty per cent., and if anything further be coming to them from the general assets, it can be but a very trifling percentage.

At fol. 323, *page* 130 *of Record*, it appears that in August, 1879, the liabilities of the bank (chiefly deposits) aggregated $263,329.52, including $91,763.76, of so-called contested claims, which included the $62,302.40 as balance of account claimed by Barings, June 4, 1879, after exhaustion of all their securities. This balance having been subsequently reduced by agreement to $49,333.34, the above mentioned aggregate of general or unsecured liabilities of the bank is reduced to $250,360.46.

The inventory of assets of the bank, at *folios* 350 *to* 352, *pages* 145–6 *of Record*, shows a nominal aggregate of $306,259.09; but included in this amount are the two items of $75,173.89, discounted paper, pledged to the Barings, and $98,700 of bonds, pledged to the same, deduction of which, from the nominal aggregate above mentioned,

leaves only $132,375.80 of unpledged assets at inventory values; but this amount was of course subject to deduction for the commissions and expenses, and for the losses and disappointments incidental to realization of the assets.

How much, exactly, has been realized from the unpledged assets, does not appear distinctly, but we have the means for a pretty close approximation.

It is undisputed that, up to the time of taking the evidence in this case, in March, 1883, four years after the failure of the bank, the dividends paid to the general or unsecured creditors amounted to no more than thirty per cent., *fol.* 170, *page* 68.

From the answers given by one of the Commissioners as to questions on our side, as to what assets are now remaining, *fols.* 193-'4-'5, *page* 77, it apears, plainly enough, that they are of trifling value—finally, when asked when they were going to present any further account, he answered, *fol.* 195, *page* 78:

> "As soon as we can get money enough to make "any sort of a dividend. *We were in hopes to pay* "*five per cent. if we could have succeeded in waiv-* "*ing that mortgage case.*"

It may therefore safely be assumed, that the unpledged assets were not sufficient to pay more than thirty-five per cent. of the general or unsecured indebtedness of the bank, *at the utmost*, and that up to the time of the actual sales made of these bonds in 1880, redemption of this pledge was entirely out of the question, and that no such idea was in the minds of any of the parties. At *folio* 102, *page* 76, Mr. Hall, one of the Commissioners, expressly admitted that there was no offer or attempt to redeem; but in truth no such evidence on our part was called for. The impossibility of redemption is manifest.

The answer further alleges that *an agreement of compromise and settlement* between the parties in relation to the account between the Barings and the bank in liquidation was made and entered into on 23d February, 1880, and

contained no reservation whatever of any right to the bank or the Commissioners, to question the sale of May, 1879, or to sue for or claim return of the bonds, or to claim any damages for or on account of the sale, or *any further or other accounting for or in respect of the bonds than the credit for the net proceeds* thereof *at the price of said sale of May*, 1879, which had been made and *given in the account which was liquidated, adjusted, and admitted by the said agreement of February* 23, 1880. Answer, *fol.* 26, *pages* 9 *and* 10 *of Record.*

A copy of this settlement agreement was annexed to the answer as Exhibit No. 10, and it is found in the Record at *fol.* 104, *page* 42—

At *fol.* 110 *page* 45, it will be seen that upon the trial the original agreement was given in evidence.

It was signed by La Combe, as Chairman of the Commissioners, and by Forstall's Sons, as agents for the Barings.

By the testimony of I. A. Blaffer (who was one of the Commissioners at that time, but who afterwards resigned and was replaced by Stafford), it distinctly appears that the signature of La Combe was affixed after consultation with his brother Commissioners, *fol.* 124, *page* 50, and that the account referred to in the agreement, and which, after the deductions agreed upon and specified, was liquidated by it, was the before mentioned account, in which the proceeds of the bonds were credited at the price of the sale of May 22, 1879, resulting in the balance, after all credits, claimed as $62,302.40, from which the agreed deductions were made, *fols.* 125–'6, *page* 51.

The testimony of La Combe himself is to the like effect, and still more positive (*fols.* 138, '39, '40, *pages* 56–'7).

The account here referred to is to be found on pages 36 to 39 of record. On page 39 will be found the credits under date of May 22, 1879, for the net proceeds of the sale of that day, viz., $87,010 for consolidated bonds, $13,337.50 for premium bonds, and $990 for State bonds, and on the debit side of the account, on page 36, is found a charge made by Forstalls, as agents, of $8,864.26 for five per cent. commission on the sales made of the various collateral securities amounting in the whole to $177,285.23,

and *including the above mentioned sale of bonds made May 22, 1879.*

By reference to the settlement agreement of February 23, 1880 (fol. 104, page 42) it is found, that by it certain specified deductions from the account were agreed to, and among others the following: "$8,864.26, being commission five per cent, on $177,285.23 reduced to one per cent., say $1,772.85."

And after specifying all the deductions agreed upon, the agreement proceeds as follows:

> "*All remaining items on the account to be ad-*
> "*mitted*, and the amount admitted to be settled in
> "cash. The only question to be submitted to the
> "Court is that of the bank's liability on $5,400
> "missing coupons on City Consolidated bonds."

This agreement of settlement *cantains no reservation whatever* of any right to make any future claim for or in respect of the bonds, or for annulling or questioning the sale of May 22, 1879, or for damages by reason of it. On the contrary, by the agreement that sale was in effect expressly ratified, by the acts of the Commissioners in accepting the credit for its proceeds in reduction of the indebtedness, and upon that basis liquidating and adjusting the account upon the balance of which they were obligated to pay, and did pay, a dividend and *actually allowing by express agreement a commission of one per cent. for making that very sale.*

There is no ground for any possible claim that this act of ratification was in ignorance by the Commissioners, of the fact that upon the sale of May 22, 1879, the bonds had been bought back, or bought in, or of any of the other facts which are now alleged to invalidate that sale.

Before this agreement of settlement, there had been a litigation in the Fifth District Court in New Orleans upon a claim made by the Forstalls as agents of the Barings against these Commissioners for certain missing coupons, and by the ANSWER OF THE COMMISSIONERS, filed before the settlement agreement of 23d Feb., 1880, *viz., on November* 10, 1879, they alleged, in reference to this sale of May 22, 1879, that the bonds were not sold according to usage,

nor in accordance with the pledge, nor according to law, but that they were sold without notice, all at one time, late in the day, below the market price, "*and were bought in by the plaintiffs themselves.*" And that the sale was illegal and wrongful, and has caused great loss, damage and injury to the creditors of the bank (*Record, fol.* 87-'8, *page* 33—*see fol.* 325-6, *page* 130-'31).

Reference to the attendant circumstances will clearly show that the action of the Commissioners, in ratifying the sale of May, 1879, by the agreement of Feb. 23, 1880, was reasonable, natural and a matter of course, under the circumstances then existing.

There was absolutely no ground whatever for disputing the validity of the pledge or of the power of sale contained in it, nor is either now pretended to be disputed. On the contrary, the validity of the act of pledge was admitted upon the trial of the present suit (*fo.* 325, page 130).

If, upon any ground the sale of May 22, 1879, could be annulled or held for naught, the effect would be merely to leave the bonds in the hands of the appellees as unsold, subject to the pledge and to the power of sale presently exerciseable at pleasure, as if the sale of May, 1879, had not been attempted.

If the Commissioners had the right and power to repudiate the sale and produce this result, they at the time of the settlement agreement of February 23, 1880, had nothing to gain by such a course and no motive for taking it.

As to the $280,000 consolidated bonds (except the defective $14,000), the price of the sale of May 22, 1879, was 31½ p. c., and in the account as settled by the agreement of Feb. 23, 1880, the bank received credit for this amount with nine months' interest on it, bringing up the actual credit at the date of the settlement to $32\frac{91}{100}$ p. c. At the time of the settlement the current market price of those bonds was less than this. By the schedule of prices of the bonds of this class appearing at *fol.* 310, *page* 123, it appears that on 30th January, 1880, the price was 31 p. c., and on Feb. 27 it was 32½ p. c. It was therefore to the clear interest of the bank and its creditors to affirm the

sale, producing the credit of $32\frac{91}{100}$ p. c. rather than to repudiate the sale and bring about a new one, supposing such a right of repudiation to exist.

As to the $54,000 premium bonds the price of the sale of May 22, 1879, was $25\frac{3}{4}$ p. c., and the addition of the nine months' interest brought the credit for it up to $26\frac{99}{100}$ p. c. The schedule of prices of the premium bonds on page 129 shows that in February, 1880, the price was $27\frac{3}{4}$ to 28 p. c. If it be assumed that upon repudiating the sale of May, 1879, and throwing these bonds upon the market, this net price could be fully realized, the gain by substituting it for the credit of $26\frac{99}{100}$ per cent. would have been a trifling sum—probably not enough on this amount of $54,000 premium bonds to counterbalance the loss consequent upon annulling the sale to Barings of the much larger amount of consolidated bonds, and requiring their re-sale.

There is thus made apparent, not only a clear ratification of the sale of May 22, 1879, and of the credit for its proceeds by the settlement agreement of Feb. 23, 1880, without any reservation whatever, but a clear and satisfactory reason for such action, as in the line of duty of the Commissioners, as faithful trustees.

It appears, however, that when the order or decree of the Fifth District Court of New Orleans correcting the tableau for distribution and directing payment of a dividend to the Barings in accordance with the settlement agreement of 23d Feb., 1880, come to be made on March 3-9, 1880, there was inserted in it a clause of reservation understood to be now greatly relied on by the complainants, which was in the words following:

> "It is further ordered, adjudged and decreed, "that all the rights of both the opponent and the "bank in liquidation touching the value of 180 mis- "sing coupons, and any damages resulting from "the sale of the bonds of the bank in pledge by "said opponents are expressly reserved."

The circumstances relating to the insertion of this re-

servation clause, and its legal consequences and results are subsequently discussed in the points and brief.

The answer further alleges, in substance, that when the defendants were about to make and consummate the actual sales of the consolidated bonds in May, 1880, it was found that their marketableness, for regular delivery, was impaired by the circumstance that under the free banking law of Louisiana they had been specially assigned by the bank, by written endorsement, to the Auditor of the State of Louisiana, and afterwards re-assigned *by the Auditor to the bank by special endorsement.* That in order to remove this difficulty and enable the defendants freely to dispose of the bonds, as they might see fit, in pursuance of their rights under the compromise agreement, the complainants applied for and obtained an order of the Fifth District Court authorizing them to endorse the bonds "to bearer," and accordingly on May 20, 1880, the complainant endorsed "to bearer" the $280,000 consolidated bonds, and delivered them over as so endorsed to the Forstalls, as agents of the Barings, with the understanding that they were about to, and the understanding and agreement that they rightfully might, sell and dispose of the bonds, as well as the other bonds which had been originally embraced in the pledge and in the sale of May, 1879, at their will and pleasure, without giving any further notice to the bank or the complainants, and without any further accountability for the bonds or their proceeds beyond the credit in account given for the proceeds of the sale of May, 1879, and ratified by the settlement agreement, and that the complainants then and there *waived* any and all previously reserved or asserted claims to question or impeach the sale of May, 1879, or for any damages by reason thereof (*answer, fo.* 34 *to* 37, *pages* 12 *and* 13); and, moreover, that if any further notice of the sales about to be made and consummated in May and June, 1880, was legally requisite, such notice was waived by the acts and proceedings of the complainants (*answer, fol.* 40, *page* 14).

It is also alleged, separately, by way of defense, in substance, that when the complainants thus endorsed the

bonds to bearer and delivered them over to Forstalls, they did so, with the full understanding that Forstalls were about to sell and dispose of the bonds, without any further notice, and with the understanding on their part that such proposed action on their part was authorized and was acquiesced in by the complainants, and that under it they would not be under any further responsibility or accountability in respect of the bonds beyond the sum already credited in account; and that, knowing this to be Forstall's understanding, the complainants, if they had any understanding or view to the contrary, they gave no notice or intimation of it to Forstalls, but designedly suppressed and concealed it, and thereby led Forstalls to go on and make the sales without notice, and are thus equitably estopped from objecting (*answer, fo.* 41 *to* 44; *pages* 14–15).

The evidence supporting these allegations of the answer is mainly to be found at *fo.* 237 *to* 240; *pages* 95–6, *and fo.* 262–3; *page* 105 *of the Record.* A copy of one of the bonds is at fo. 331 to 335; pages 133 to 136. The form of the special endorsements and of the transfer to bearer made by the Commissioners May 20, 1880, appears at fo. 336–7; page 136. A copy of the order of Court authorizing the Commissioners to make the endorsement is at *fo.* 200; *pages* 79–80.

It is clearly established by the testimony of Forstall that when, after the compromise agreement he had put the bonds on the market and negotiated the sales of May, 1880, when delivery of these bonds came to be made, the purchasers objected on account of the technical difficulty arising from the special endorsements appearing on the bonds, and that thereupon he went to Mr. Lacombe, chairman of the Commissioners, explained to him the technical difficulty, and called upon the Commissioners "*upon the strength of the compromise*" to make the formal transfer to bearer which was required. That to this Lacombe assented, saying that it was all right, but that they would have to get an order of Court to authorize them to do it. That accordingly the Commissioners applied for and obtained such an order, and then by appoint

ment they all came to Forstall's office where the bonds were, and put upon each an endorsement to bearer with their signatures, to which was added a notarial verification, and the bonds thus endorsed were turned over to Forstalls and they went on and consummated the sales. At the bottom of page 95 is found this testimony:

> "Q. Did you state to him then and there that "it was for the purpose of selling them in the "market that you called upon him to endorse the "bonds to bearer?
> "A. I told him that we had sold them and "needed this transfer to make the delivery."

It was attempted to break the force of this evidence by the testimony of the Commissioners to the effect that they had been advised by their counsel, that they could thus endorse the bonds without prejudicing any claim they might have against the Barings, but it is not alleged or pretended that any intimation to this effect was made to Forstalls or Barings, or that anything was said or done at the time, by the Commissioners, or any of them, detracting from the force or effect of their apparent assent to the sale of the bonds then about to be consummated, which was manifested by their making the endorsement at Forstall's request for the very purpose of enabling Forstalls to complete such sales.

At fol. 245; *page* 98, will be found testimony to the effect that upon sales by a pledgee, under such a pledge as this, it is not customary, in New Orleans, to give notice of the intended sale.

At fol. 234; *page* 94, there is testimony to the effect, that sales were made of securities covered by this pledge other than the bonds in question, without giving notice, and that such other sales were never complained of by the Commissioners.

The answer likewise sets up the defense *at fol.* 50-51; *page* 17, that the defendants brought a suit against the Commissioners in the Fifth District Court of New Orleans,

claiming certain missing coupons; that, by their answer in that suit, the Commissioners raised the question of the validity of the sale of the bonds made in May, 1879, attacking it upon like grounds as they do in this suit, and that the decree in that suit was in favor of the complainants in it (who are the defendants here), and therefore insists that the claim made in this suit is barred by that decree, as *res judicata*.

At fol. 51–2; pages 17 and 18, the like defense of *res judicata* is set up, based upon the decree made in the Fifth District Court of the Parish of Orleans, in the suit of the State of Louisiana *ex rel.* Wogan *v.* The Mechanics' and Traders' Bank, whereby an adjudication was made, establishing the account, in which credit was given for the proceeds of the bonds on the basis of the sale of May 22, 1879.

At fol. 53; *page* 18, the answer sets up the defense of the Statute of Limitations, based upon section 3536 of the Civil Code of Louisiana, under which it is alleged the present claim is prescribed and barred by the lapse of the term of one year from May 22, 1879, when the sale complained of by the bill in this suit was made.

And at *fol.* 49; *page* 17, the answer sets up, irrespective of positive statutory bar, the defense of equitable estoppel, based upon the laches and delay of the complainants in setting up their claim to avoid the sale, and reclaim the bonds or their value, until after long delay and great and unexpected change of circumstances, and tacit if not express acquiescence.

The final decree in this case in the Circuit Court, April 16, 1883, *page* 147 *of Record* dismissed the complainants' bill, and the present appeal is by them from that decree.

POINTS.

First Point.—The genuineness of the signatures to the acts of pledge, and that they were executed by the officers of the bank under competent authority were expressly admitted upon the trial (*fol.* 325; *page* 130). It is therefore indisputable that the securities in question were held by the Barings, through the Forstalls, as their agents, under a valid pledge; by the terms of which they had express power, in the event of failure to make punctual payment of the debt secured by it, "to cause the pledged property to be disposed of for cash *at public or private sale* at the option of the Forstalls," and to apply the proceeds of the sale to or towards payment of the indebtedness, with interest and commissions and expenses.

Jaquet v. *his Creditors*, 38 *La. Ann. R.*, 863.

It is also indisputable, as shown by the foregoing statement of facts, that at the time of the failure of the bank, and thereafter continuously up to and at the time when the last of the pledged property was sold and absolutely disposed of by the pledgees, the amount of the indebtedness secured by the pledge largely exceeded the value of the entire pledged property, and that the pledgor was hopelessly insolvent, and it and its representatives were so circumstanced as to make redemption impossible. The pledgor was a banking corporation which had become insolvent, and was by legal proceedings put in liquidation and placed in the hands of Receivers or Commissioners, and its assets available for distribution among its general creditors were not adequate to pay, at the utmost, more than one-third of of its unsecured debt. In order to redeem, it would, of course, have been necessary to pay the whole indebtedness in cash, and the only method by which the excess of indebtedness beyond the value of the pledge could possibly have been provided for, must have been to pay such excess out of the fund properly distributable to the general creditors.

As the effect of this would have been *to pay in full the*

unsecured portion of the Barings debt, at the cost of the general creditors, and to the still further reduction of their dividend, any such action of the Commissioners would have been *a fraud and breach of trust on their part.* It is manifest, therefore, that in this case, redemption of the pledge was a thing out of the question.

In considering the conduct of the parties respectively and adjudicating upon their rights in respect of the transactions which this suit brings under review, the situation, condition and circumstances above referred to should always be borne in mind.

Second Point.—It is not material to the practical result of this suit, whether the sale of May 22, 1879, be held to have extinguished, *by its own force*, the nominal equity of redemption of the pledgors, or not.

The objection to that sale, of most apparent weight, is, that immediately afterwards the vendors bought back the bonds from the purchaser, at an advance of one-eighth of one per cent. upon the price of the sale, and that before the making of the sale, which was at the Stock Exchange, the broker of the sellers (under authority from them) privately offered to persons who, they supposed, might bid (including the person who actually purchased) that in case of their purchasing, the sellers would repurchase at such advance. It would seem, however, *that the purchaser did not bind himself to such resale*, but had merely the option of making it, and it clearly appears that the price of the sale was the full market price at the time, that the buyer was a person of abundant means and responsibility, and that the brokers were instructed not to let the bonds go below the full market value. It was not, therefore, in strictness, a purchase at the sale by the seller or his agent; but it is not to be denied that, in case of a sale made under such circumstances, followed by immediate repurchase, a Court of Equity, if there were the least suspicion of inadequacy of price or unfairness of any kind, would have been quite indisposed to uphold the sale as

conclusive against the dissent of the pledgor, and perhaps it might not have been upheld against such dissent manifested within a reasonable time, even without the existence of any such circumstance.

The sale, however, having been made at a fair and full price, so that ratification of it would not be disadvantageous to the pledgor or its representatives, such ratification of it by subsequent agreement, would be free from legal objection, and we think that it will be shown in a subsequent portion of this brief, that in this case there clearly was such ratification.

Laying aside for the moment, however, that point of ratification, we may observe, that in such a case of sale and repurchase, or nominal sale, held by a Court of Equity to be inconclusive as against a dissenting pledgor, where there had been a *subsequent actual resale* by the pledgee (who had, in effect, bought in at the formal sale under the pledge) before any formal annulment of such nominal sale, a decree holding the pledgee accountable for the advance or profit obtained by him upon the resale in addition to the price of the first sale, would substantially satisfy the requirements of the rules of equity law applicable to the subject.

At all events, *the rule most unfavorable to the pledgee*, which could be applied in case of a sale formally or nominally made under a pledge, at which the pledgee was himself the purchaser, would be to treat such formal or nominal sale as a *mere nullity*, and to leave the parties respectively in respect of the debt, the pledge, the pledged property, and the right and power of disposing it, in the like position in all respects as if the nominal and ineffectual sale had not been attempted.

Such a rule, with such results, is *the one most unfavorable to the pledgee*, which it can be legally possible to apply in this case, in respect of the sale of May, 1879.

If it be so applied (and the ratification of the sale of 1879 be laid out of view) the legal effect is, to hold, that up to the time of the actual sales of May and June, 1880, the bonds remained in the hands of the pledgees as such, with full power of sale in accordance with the terms of the pledge, just as if the sale of May, 1879, had never been

made or attempted. And then, the actual sales of May and June, 1880, were made in due execution of the power of sale contained in the pledge, and a charge to the pledgees on account, of the full prices of those sales of May and June, 1880, in place and stead of the prices of the sale of May, 1879, would show no demand in favor of the complainants against them in respect of the bonds in question, but on the contrary a considerable balance of their debt still remaining due to them, after due application of the whole of the pledged property, and after crediting also all payments on account of the debt from the dividends in liquidation of the insolvent bank.

And, therefore, we say under this point, that the maintenance of *either* of the sales (of May, 1879, or May and June, 1880) is equally fatal to the complainant's case.

And here, we desire to point out the circumstances appearing in the record which show with entire clearness, that the sale of May, 1879 (conducted as it was, including the repurchase) whatever technical objections may exist against it, was *in entire good faith and fairness*, from *motives and* for *purposes free from either legal or moral objection*, and not with any view to causing a sacrifice or making a speculation or profit to the pledgees at the expense of the bank or its general creditors, consequent upon an expected advance in price or value of the bonds.

When the failure took place, the Barings found, that for their cash advances under the banker's credit they had granted, and for which, as the account shows, they received merely a commission of a quarter of one per cent., they were creditors to the amount of some fifty or sixty thousand dollars beyond the utmost value of the collateral securities which they held in pledge, and they, very naturally and properly, desired to obtain, upon this unsecured portion of their debt, their *pro rata* dividend in common with the unsecured creditors, from the general assets of the bank.

To this end it was necessary to convert the pledged assets, so as to ascertain the unsecured balance upon which a dividend might be claimed, and Mr. Forstalls testifies

that this was their object and purpose in proceeding to sell the bonds shortly after the bank's failure (*fol.* 228, *pages* 91–2).

But he further testifies that there was a special object for hastening the sale and making it suddenly, upon the particular day on which it was made, namely, that one of the Commissioners threatened him on the morning of that day that they would take proceedings to enjoin him and sequestrate the bonds, and place them in the hands of the sheriff (*fo.* 235, *page* 94).

For such a performance on the part of the Commissioners there was, of course, no just basis, the validity of the pledge and the amount of the debt being too clear for *bona fide* dispute; but, besides the natural objection to having the securities, on the faith of which the Barings had made cash advances to their full value, and even beyond it, taken out of their hands and tied up during an unreasonable litigation, there was the special and very strong objection founded on the fear of defalcation or misconduct on the part of the sheriff in whose hands it was threatened to place the bonds under the sequestration process, it having become fashionable for sheriffs in New Orleans to become defaulters, and Mr. Forstall having been told by the counsel of the Barings that he had no confidence in the particular sheriff then in office (*fo.* 228, *page* 91; *fos.* 231–2, *page* 93; *fo.* 257, *page* 103; *fo.* 236, *page* 94).

That this distrust of this sheriff was well justified is abundantly proved. Among the formal admissions made upon the trial is one that "among the successive sheriffs of New Orleans during the last twenty years six out of nine have been defaulters or delinquents, and their sureties have been sued on their bonds, and that the particular sheriff who was in office in May, 1879, 'proved to be a defaulter for a considerable amount, and absconded'" (*fo.* 324, *page* 130).

That the motive of the Barings or their agent in buying back the bonds upon the sale of May, 1879, and holding on to them for a time, was *not to make a profit or speculation* upon their transaction with this bank, but merely *to avert, if possible, some part of their loss*, is shown by their subsequent conduct.

When a rise in the price of the bonds had taken place to a moderate extent, but yet not sufficient to bring them out without loss, they took advantage of it to make the actual sales of May and June, 1880, of all the bonds, although the prices then obtained, if credited to the account, would, after exhausting all their securities, and crediting the actual proceeds, as well as all the dividends from the insolvent bank, still leave them losers upon the entire transaction to the extent of over $18,000, as shown by the foregoing statement of facts.

Third Point.—The sale of May, 1879, having been made at fair and full prices at that time, and the course of prices from that time forward for a period of nine months up to February 23, 1880, having shown to the Commissioners (*although they had protested* against the sale just after it was made, and *although they had objected against it in legal proceedings, upon the ground, among others, that at the sale the bonds had been bought in by the Barings, fo.* 87, *page* 33), that no gain to them or the bank would result from their insisting upon their objection, or from annulling the sale, so that a new sale would be requisite, but that, on the contrary, it would be more to the advantage of the bank and its creditors to hold the Barings to that sale, and take credit in the account for its proceeds with interest from May 22, 1879, *they did, by the compromise agreement of February* 23, 1880, (*fos.* 103–4, *page* 42), *distinctly ratify that sale, and liquidate and adjust the account with the Barings, upon the basis of taking credit for its proceeds at its prices, with interest from its date, without any reservation or condition whatever, and moreover, as part of the compromise agreement, distinctly agreed to allow one per cent. upon the amount of the sale thus ratified, as the commission for making it.*

This agreement of ratification by the Commissioners was not only absolute and unqualified in itself, but was an entirely natural and proper agreement, beneficial to their trust estate, and in the plain line of their duty in the ordi-

nary administration of their trust. Supposing the sale of May, 1879, to be subject to annullment at their pleasure, so that in legal effect the bonds were yet in the hands of the pledgees, subject to power of present sale by them, at their pleasure, with the right to carry the proceeds to the credit of the account against the indebtedness for which the bonds were pledged, the substantial effect of the settlement agreement was to accomplish a sale of the bonds to the pledgees at a price fixed by agreement, being at least the fair and full value. That foregoing statement of facts shows the entire adequacy of the price, and the credit in account for the bonds, obtained as part of the settlement, and that it was, to say the least, as good a financial result for the bank and its creditors as could have been obtained by annulling the sale of May, 1879, so as to require a new sale.

The *ratification of the sale by this compromise agreement was absolute, and took effect from the time of its execution, irrespective of any subsequent order of Court which may have been requisite in order to enable the Barings to collect a further dividend* upon the adjusted balance.

Fourth Point.—The effect of the agreement of February 23, 1880, as a ratification of the sale of May, 1879, is not impaired or affected by the clause of reservation inserted in the subsequent order or decree made by the Fifth District Court of New Orleans, March 3-9, 1880, which purports to "order, adjudge and decree that all the rights of both "the opponents and the bank in liquidation, touching the "value of 180 missing coupons, and any damages result-"ing from the sale of the bonds of the bank in pledge by "said opponents, are expressly reserved."

How this clause of reservation came to be inserted in the order, is not explained by the evidence.

The defendant's answer in this suit claims that it was inserted by inadvertence and mistake (*fo.* 34; *page* 12).

It is certain that *it was not in pursuance of anything contained in the settlement agreement* of 23d February. On

the contrary, if the reservation as to damages for sale of the bonds is to have any such construction as the complainants claim, it is quite incongruous with that agreement, and in hostility to its purport and evident intent, and to the whole scope of the arrangement then made.

The settlement agreement of 23d February provides that "Messrs. A. H. Browne, attorney for the bank, and W. A. Gordon, attorney for Baring Brothers & Co., will take needful legal steps to carry out the above agreement."

It would seem to be most probable that this reservation clause was inserted in the order through some *mistake or misapprehension on the part of the attorney for the bank* when he was undertaking to procure the necessary order to carry out the settlement agreement, which the order itself recites as "the agreement of compromise entered into by the parties and exhibited to the Court." There is nothing to indicate that Forstalls or Barings or Mr. Gordon, their attorney, took any part in the making of the order, or appeared in Court in relation to it, or *ever knew of this reservation being contained in it*, and it is submitted that, in view of the *utter incongruity of the reservation with the terms of the agreement actually entered into by the parties*, no presumption of knowledge on their part of the incongruous reservation, should be indulged.

No explanation on the subject was obtainable from Mr. Gordon, who, the evidence shows, was at the time of taking it, in March, 1883, substantially out of his mind, and had been so for about two years (*fo.* 284–5; *page* 113.)

But if the defendants be held fully chargeable with the consequences of the reservation according to its tenor, it certainly *does not of itself create any claim, nor revive any claim which had been already extinguished*, but at most *preserves from prejudice by the decree such claim, if any, as then actually subsisted.* And any right or claim to object to or annul the sale of 29th May, 1879, having *been extinguished* by the ratification of that sale by the compromise agreement of 23d February, this clause in the order of 3–9 March, *did not and could not revive it.*

Moreover, this reservation clearly *does not purport to*

be of any right or claim to demand back the bonds themselves, or their value, at that or a future period, but is merely of a claim for damages resulting from that sale, which must be construed as referring merely to damages sustained up to that time, or up to the time of the credit in account for the proceeds of the sale having been accepted by the Commissioners, or for damages up to the time of the reservation, and it has been shown in the foregoing statement of facts that there were in fact no such damages.

Fifth Point.—The question whether, *under the terms of the written act of pledge* in case of default in payment and sale thereupon of pledged securities by the Forstalls, in execution of the express power of sale, it was requisite that the sale should be made upon or with previous notice to the pledgor, in order to make such sale a due and regular exercise of the power, is a question which may perhaps be regarded as applicable both to the sale of 1879 and the sale of 1880, *although as to each sale we conceive that there were circumstances* which *avoid* any effect prejudicial to the pledgees, which might otherwise be consequent upon the failure to give formal notice, supposing notice to be requisite under the terms of the written contract merely.

But, *considering the question of the necessity of notice merely upon the terms of the written act of pledge*, we say:

In case of existing default, justifying a sale under the power, previous notice of the sale was not a condition of its regularity or efficacy and conclusiveness.

In this case the parties undertook, as certainly they lawfully might, to *regulate by express contract* the *manner and conditions* of the sale.

They by such contract provide that the sale may be either public or *private*, at the *option* of the Forstalls. The omission to provide for the giving of notice is sufficient to show that no such requisite was intended. The Forstalls were under no obligation to give notice, *simply*

because the special contract which regulated their conduct imposed no such obligation upon them.

Even if it could be considered that in case of such an authority to sell, at public auction merely, it could be fairly implied that notice of the time and place of sale should be given, in order to enable the pledgee to attend the sale and attend to the protection of his interest, there can be no such implication in case of an express authority to sell at *private sale.*

Milliken v. *Dehon*, 27 *New York R.*, 364.
Robinson v. *Hurley*, 11 *Iowa*, 410.
Louisiana Savings Bank, &c., v. *Bussey*, 27 *La. Ann.*, 472.

Moreover, in this case the authority was not merely given to the Forstalls to make the sale as agents of the Barings, and in exercise of their rights as the pledgees, but they were likely expressly authorized in making the sale to act as the agents of the pledgors. Under such an authority not merely to sell, but to sell *privately* at option, there is no more necessity to give notice of the sale than in the ordinary case of sale by a factor.

Besides, there is evidence in this case (*fo.* 245; *page* 98, of Record), that by the usage in New Orleans, in sales under such a pledge, it is *not the custom to notify the pledgor* of the intended sale, and upon this point *there is no contradictory evidence.*

And we think no case can be found indicating that by the Louisiana law, there is any necessity of notice in such case.

Sixth Point.—If the sale made in 1879 and the acts in ratification of it prior to the sales of May and June, 1880, had not effectually foreclosed the equity of redemption of the pledgors, and barred and extinguished all rights on their part to make claim in respect of the bonds or their proceeds or value beyond the credit in account which had been already given, the sales made in May and June, 1880, were completely effectual to those ends.

Upon the assumption of there remaining up to the time of the sales of 1880, any equity of redemption or subsisting right or interest of the pledgors or their representatives in respect of the bonds or their proceeds or value, *the bonds then remaining in the hands of the pledgees through their agents, were held by them, subject to the pledge and with the contract power of sale remaining in full force, and presently exercisable at any time at pleasure, and under that situation they were duly and regularly sold at private sale in May and June*, 1880, *to strangers, for the market price and full value, neither Barings nor Forstalls from that time forth retaining any interest in the bonds.*

The only question in relation to the regularity and efficacy of this sale and its absolute conclusiveness against the claim now made by the complainants, which could possibly be deemed open to discussion is upon the point of notice.

As to that point, we think it is above sufficiently shown that, considered merely upon the terms and conditions of the contract, notice was not legally requisite. But it is not really necessary to decide that question, because the evidence conclusively establishes that while those sales were being made, and before they were consummated, *the complainants had notice* of them, and that they were about to be consummated; and that they *not only acquiesced in and assented* to them, but did *affirmative acts in furtherance of the sales, in order that they might be consummated.*

If, under this express authority to sell at private sale, the pledgees were under any obligation; when negotiating or about to negotiate a private sale, to give notice before completing the sale, the notice certainly was not required to be given with any particular formality. Information that the sale was about to take place, was all that could be required, and the notice actually given in this case was abundantly sufficient.

We quote from the testimony of Mr. Forstall (*folio* 238, page 95 *of record* as follows:

> "Q. Then, as I understand you, you put these
> "bonds upon the market; that your broker in-
> "formed you that he could not sell them without

"the indorsement to bearer. You then applied to
"Mr. Lacombe for the indorsement?
"A. Yes, sir."
"Q. Did you state to him then and there that it
"was for the purpose of selling them in the market
"that you called upon him to indorse the bonds to
"bearer?
"A. I told him that we had sold them and needed
"this transfer to make the delivery."

This testimony is direct and positive, and fully meets any possible requirement as to notice, and the complainant Lacombe, the chairman of the commissioners, who was examined as a witness, does not at all contradict it. The fact thus sworn to by Forstall must, therefore, be regarded as absolutely established, and we submit that it puts an end to any doubt that otherwise could possibly be entertained as to the regularity and conclusiveness of the private sale thus made in 1880.

If, with such notification given, the commissioners desired any more particular information as to the names of the purchasers or the prices upon such intended sale, clearly it was their duty to ask for it, and their omission to do so operated as a *waiver*.

Seventh Point.—But the Commissioners had not only adequate notice of the sales of 1880, before such sales were consummated, but their conduct upon that occasion amounted to a complete *recognition of the right* of the Forstalls to *sell the whole of the pledged securities in the manner they were then proposing to do, i. e.*, at private sale, without giving any further notice, and in substance and effect was *an assent to the pursuance by Forstalls of that course*, and a waiver of any possible right of objection which might have been previously reserved to the commissioners.

We quote here from Forstalls' testimony (*fo.* 237–'8, *page* 95).

"Q. Mr. Forstall, please explain to us how the
"two hundred and eighty consolidated bonds came

"to be endorsed to bearer by the commissioners. "I want you to state what was done in that respect, "what it was done for, and what you in particular "did. How did you come to have them endorsed "to bearer?

"A. When the compromise was made, settling all "questions and establishing our account by their "sale, these collaterals were entirely our property. "In consideration of that settlement by the Com- "missioners, we were instructed to realize, on a "momentary rising of the market. We put them "on the market, and when we came to deliver "them the broker rushed back to us and said: "'Well, this can't be made a delivery, because "they have to be retransferred by the bank to "bearer.' *We went to Mr. Lacombe and showed "him the bonds, explaining to him that they were "the only ones that could make the transfer*, and "they were called upon, *on the strength of our "compromise*, to give us the transfer which would "*enable us to sell* these bonds. Mr. Lacombe said: "'Well, that's all right, but you know, Oscar, we "will have to get the order from Court. We always "have to get an order from Court.'

"Q. An order from Court?

"A. Authority from Court, and this authority "was asked for by their attorney. The order was "granted, and these gentlemen signed the bonds."

Thus we find that Forstall, upon being met by the intended purchaser's objection, founded upon the old special endorsements, called upon the commissioners, "*on the "strength of their compromise*," to relieve the difficulty, by endorsing the bonds to bearer, so as to enable the Forstalls to sell and deliver them as they were proposing to do.

To the request thus made of them "on the strength of the compromise," the commmissioners expressly assented, in the first instance, verbally, by saying it was "all right," and then, by acts, in making an endorsement to bearer on each of the consolidated bonds, and returning or handing them over as thus endorsed to the Forstalls, *to the end that they might go on to sell and deliver them*, as they were claiming to have the right to do, and distinctly informed the commissioners they were then about to do.

And we submit that this evidence clearly establishes:

1. The commissioners' recognition of and assent to Forstall's claim, that *under or on the strength of the compromise* they were entitled to go on and sell at their pleasure without further notice, all the bonds which had been included in the pledge, and for the proceeds or price of which credit had been given in the compromise.

2. The commissioners' absolute concurrence in the sales then about to be made of the bonds they endorsed, and their aid and assistance in carrying out the projected sales —as fully as if, in case of a contracted sale by the pledgee, of bulky articles embraced in a pledge, the pledgor had given physical assistance in making manual delivery to the purchaser.

The attempt of the commissioners in their evidence to escape the effect of this action on their part is entirely futile.

The attempt is based on two grounds—

1. They undertake to say that they had been advised by their counsel, that they could make this endorsement without prejudice to any claim they might have against the Barings.

2. They (some of them) try (in what we feel entitled by the evidence to characterize as a shuffling and disingenuous way) to make it appear that when they thus endorsed the bonds, they did not know or distinctly understand that the bonds which they were thus endorsing in order to relieve a technical embarrassment in the way of their free negotiation, were still held by the Forstalls, agents of the Barings.

As to the first ground.—It is a sufficient answer, that while they assert that their counsel had given them such advice, that they *could* do the act "without prejudice," they do not assert that any information of such advice, nor even the slightest intimation of any intention or un-

derstanding on their part, that the act *was so done by them without prejudice* was given to Forstalls or Barings. In the absence of any such information or intimation, the legal effect of what they actually did cannot be at all qualified or affected by evidence of such alleged private and concealed advice from their own counsel.

Their action, *as it appeared to Forstalls*, with whom they were dealing, amounted in legal effect to recognition of Forstalls' claim of right, under the compromise agreement, to sell the pledged bonds at pleasure and without giving particular notice, and to assent to, and concurrence by, the commissioners in the sales then about to be consummated. Forstalls were *entitled to understand* the commissioners' action, *as it appeared upon its face*, and *to base their own action* in respect of the subject matter accordingly. If the commissioners had any different view, it was their duty to declare it to Forstalls in order that they might not be *misled*. Having omitted to do so, and Forstalls having taken important action, based upon that of the commissioners as *it appeared upon its face*, the commissioners are now equitably estopped from assuming a contrary position. The necessity, in the interest of justice, of maintaining this equitable estoppel is manifest, when it is considered that at the time of this transaction, if the commissioners had any remaining equity of redemption in any of these bonds, or any right to object to the disposition of them in the way and manner Forstalls were then proposing, Forstalls, as agent of Barings, held them in pledge for a debt, considerably exceeding their value, with an absolute present power of sale, by the exercise of which they could without delay have conclusively and certainly extinguished all equity of redemption and all rights whatsoever of the complainants, by selling under a notice which would have been *the merest formality*, not varying in the least degree the amount of net proceeds nor being of the slightest benefit to the commissioners in any respect. Certainly, a court of equity could never permit the commissioners by means of an *apparent* acquiescence in the course which Barings, through Forstalls, their agents, were actually pursuing, to mislead them, so as to induce them to omit

the barren formal notice, and take the other course, and then, years after the sale thus made, and when under changed circumstances, the market value of the bonds had more than doubled, set up the lack of such formal notice, as a ground for holding the Barings responsible for such rise in price long subsequent to the sale.

And we submit that the testimony on the side of the complainants in relation to this alleged private advice of their counsel (that they could practically concur in the sale, by doing acts to aid in carrying it out, and yet not prejudice their alleged claim against the Barings), is quite suspicious, to say the least.

To us it seems difficult to understand how counsel could thus advise. Moreover, the evidence indicates quite distinctly that the counsel under whose advice the commissioners were then acting, were of opinion, and so advised them, that they had *not* any legal claim against the Barings, nor any sufficient ground for bringing suit against them. The commissioners, in undertaking to explain the cause of the long delay in bringing this suit, say that it was *because their counsel advised against it*, or would not advise in favor of it; and they explain that the suit was finally brought at the instance of one of the depositors of the bank, who recommended to them, for bringing it, his own attorney or counsel, whom they accordingly engaged for the purpose (*fo.* 182–3–4–5, *pages* 72–3; *fo.* 151–2, *pages* 60–61; *fo.* 220–21, *page* 88).

It seems probable that what their counsel really advised them, when the question of endorsing these bonds to bearer came up was, *not* that it could be done without prejudicing any real claim against the Barings, but that there was really no claim against the Barings to be prejudiced by it.

As to the pretence, that when the commissioners endorsed the bonds to bearer, they did not fairly understand that they were then held by the Forstalls, as agents for the Barings, and that the endorsement was for the purpose of facilitating their sale by Forstalls as Barings' agents, we submit that the evidence shows it to be merely a shuffling pretence.

One of the commissioners, Stafford (the only one who was not familiar with the transaction originally, he having been appointed in March, 1880, in place of Blaffer resigned), frankly admits, in his testimony, that when *he* endorsed the bonds, he understood that it was done at the request of the Forstalls, the Barings agents, and that he understood or supposed that they owned the bonds (*fols.* 219–20, *pages* 87–8—*fol.* 222, *page* 89), and Mr. Stafford further testifies as follows:

> "Q. But yet you, as one of the three commis-
> "sioners, in endorsing these bonds to bearer, there-
> "by, as you say yourself, to render them negotiable,
> "you knew that you were enabling Messrs. For-
> "stalls' Sons to dispose of them?
> "A. Yes, sir.
> "Q. *And you meant that they should be able to*
> "*dispose of them in that way?*
> "A. I consented certainly by the act of endorse-
> "ment."

As to the doubt or cloud which the other Commissioners, Lacombe and Hall, affect to throw upon this point, it is to be observed in the first place—that unquestionably the bonds were bought in or bought back by the Barings, through Forstalls, on the Stock Exchange sale of May, 1879, and that this fact was well known to the commissioners, because they set it up in their answer, filed November 10, 1879, in the suit brought by Forstalls against them for certain missing coupons (*fol.* 87–8, *page* 33 *of record*).

Then, the application made for the endorsement of these bonds, (under which the endorsement was made in May, 1880,) was confessedly made by Forstalls to the commissioners, and they all admit that they went to Forstalls' office for the purpose of endorsing the bonds; that there the bonds were, *in the possession of Forstalls*, and that the commissioners thereupon made the endorsement, and turned over or handed back to Forstalls the bonds thus endorsed (*fos.* 178–79, *page* 71; *fo.* 145, *page* 59). *Upon these facts merely*, viz., the original pledge of the bonds to Barings, through their agents Forstalls, their being bought in on the Stock Exchange sale to the knowledge of

the commissioners, and their being, at the time of the endorsement in May, 1880, still in the possession of Forstalls, the well-known agents of Barings, (which possession was *prima facie* evidence of ownership,) and the endorsement being made at Forstalls' office, and on their request, and there not having been any intimation of ownership or claim by any one else, there could be little or no foundation for the affectation of ignorance by the commissioners, as to who was the holder of the bonds at the time when they made the endorsement.

But the case in this respect, by no means rests merely upon these circumstances.

We have the positive evidence of Forstall before quoted, that he went to Lacombe, the chairman of the Commissioners, and told him of the technical difficulty he was experiencing in sale and delivery of the bonds by reason of the old special endorsements, and requested that the commissioners should endorse the bonds to the bearer in order that they, Forstalls, might complete, by regular delivery, the sale which they had been negotiating.

This testimony puts the point in question beyond a doubt. It is positive and was given *subsequent* to the testimony of Lacombe in this point, which we have before characterized as shuffling, and Lacombe did not interpose any contradiction to this positive testimony of Forstall.

Eighth Point.—If the reservation clause contained in the order or decree of March 3–9, 1880, be regarded as operative and binding upon the appellees as fully as if it were an agreement by them, notwithstanding its inconsistency with the agreement which they did make, and the lack of any evidence of their being really parties to or cognizant of it, and if such reservation be given effect to upon the broadest measure, and upon the construction most unfavorable to the appellees which can possiby be deemed consistent with its language, there still cannot be made out, upon the basis of it (especially when considered in connection with the subsequent actual sales

of the bonds in May and June, 1880) any legal foundation for a claim against the appellees, for the actual return to the appellants of the bonds in question, or for recovery against them of the market value which they bore at the time of the commencement of this suit in May and June, 1880 (which was much more than twice their value at the time of the actual sales made in May and June, 1880) even supposing the positions of the foregoing sixth and seventh points to be overruled.

We have before adverted to the circumstance, that this reservation does not even purport to be, of any right to reclaim the pledged bonds specifically or their value, but is professedly limited to any right for "any damages resulting from the sale of the bonds of the bank in pledge," and that it does not purport to *create* or *revive* any such right, but merely saves from extinction such right, if any were then (at the time of the order or decree) subsisting.

The bonds being indisputably subject to a valid pledge for a large indebtedness, with power of sale vested in the pledgee, the interest of the complainants was, confessedly, a mere equity of redemption, and was subject to be terminated at any time by regular sale under the power, and application of the proceeds on account of the indebtedness, which at the time of the order, as well as continuously for a long time before and a long time afterwards, was greater than the whole value of the pledge.

Some nine months before the order, there had been an attempted sale under the power, which was at a full and fair price at the time, but it was without regular notice, which was claimed by the pledgees to be necessary, and was accompanied by an understanding for repurchase by the pledgees, which had been at once carried into effect, so that the bonds still remained in the hands of the pledgees, and the validity of this sale had been disputed by the pledgor.

Then came the compromise agreement of February 23, 1880, by which the pledgors *received and accepted credit in account* for the proceeds of the bonds at the price of

this previous sale, which had been made a matter of dispute. Then, some nine or fifteen days afterwards, comes this order, with its clause of reservation, and the position which the complainants assert, and which is of course the one most favorable to them, is, that this reservation clause is to be treated as if it had been made a part of the compromise agreement of February 23, 1880.

And then, subsequently, in May and June, 1880, there were the actual sales of all the bonds made by the pledgees at prices which, after application on account of the indebtedness, left a considerable balance unsatisfied; but it is claimed by the pledgees that in these sales also there was an irregularity from alleged defectiveness in notice.

Now, upon the assumption that the reservation clause is to be regarded as if part of the compromise agreement of February 23, 1880, we submit:

1. That no claim for actual return of the bonds can be maintained, not only because the reservation is expressly limited to a claim for damages, but also because of the actual sales made in May and June, 1880, with the complainants' knowledge and substantial acquiescence at the time, which render actual return impossible.

2. That the reservation of a claim for damages is necessarily limited to damages estimated, at most, according to the difference between the price of the disputed sale made in May, 1879, and the market or obtainable prices subsequent to that period, *up to the time* (*February* 23, 1880), *when, by mutual agreement, credit in account was given and accepted, in reduction of the indebtedness secured by the pledge, for the proceeds of the bonds, at the price of the sale of May*, 1879.

Such agreed credit in account, for the proceeds of the disputed sale, is equivalent, in legal effect, to a cash payment over of the proceeds of a sale, the propriety or regularity of which was matter of dispute, by the person—say an agent—making it, to him for whose account it was claimed to have been properly made, but who disputed its propriety. If, in such a case, the party disputing the sale

had, anterior to the payment over of the proceeds, made a claim for damages because of the sale having been made improperly and at a disadvantageous price, and it had been made a condition of the receipt of such payment that it should be without prejudice to the owner's claim for damages, any claim for such damages, subsequently asserted, would necessarily be limited to damages estimated according to the ruling price or value up to the time of such payment over of the price, and damages thus limited would afford full compensation.

In such a case, a claim for damages estimated upon the basis of a rise in price occurring subsequently to such payment over of the proceeds, would be manifestly inadmissible, and indeed absurd.

If, after such payment over of proceeds, the original owner wished to take the chances of the future market for the article which had been sold improperly and against his wishes, all he would have to do would be, to replace it, paying for it out of the proceeds thus paid over to him; and the presumption would be, that if he entertained such desire he made such replacement. Certainly, after doing so, or having such opportunity to do so, he could never be permitted to hold the agent who had made the original sale, liable for such future rise in price, and thus in case of a favorable turn of the market, get, *twice over*, the benefit of the rise.

The like rule is applicable under the circumstances of this case, to the credit in account for the proceeds of the sale made in May, 1879, which by mutual agreement was made and accepted in February, 1880. By such credit the proceeds of the disputed sale were *in legal effect* paid over to the pledgor. From that time forth, the pledgor certainly had no capital whatever invested in the property, nor any risk of loss in case of subsequent fall in price. The pledgee, who had long before advanced, in cash, the whole amount of the price, became, by giving the credit, the purchaser, in effect, so as to be subject exclusively to the risk of loss in case of future depreciation, and certainly there is no legal or equitable principle, which, in such a case as this of agreed credit

for the proceeds, with such a reservation as that of the claim for damages, can give to the original pledgor the right to continue, for an indefinite term in the future, a speculation upon the future price of the article, *wholly with the funds and wholly at the risk of the pledgee.*

On the contrary, in such a case and with such a reservation, the damages could not go beyond a sum fixed upon the basis of price or value ruling up to the time of the payment over of proceeds by the agreed credit in account.

3. That if the proposition above stated (as No. 2) be disregarded or overruled, the damages recoverable under this reservation cannot go beyond a sum fixed upon the basis of the actual sales made in May and June, 1880.

The conduct of the commissioners in regard to those sales, which is before adverted to, is utterly inconsistent with any fair, or reasonable, or permissible claim on their part, for any damages estimated upon the basis of prices beyond those ruling at the time of the sales of May and June, 1880. When we add the fact of those sales with the contemporaneous knowledge of their commissioners, and their acts of acquiescence, and even concurrence and aid, to the previously considered circumstances, of the cash advances of the pledgees to an amount exceeding the whole value of the pledge, the credit in account given and accepted, and the compromise agreement as above mentioned, it would be wholly incongruous with the actual situation and relations of the parties, and utterly unreasonable and unjust, to hold the Barings, after they had thus parted in good faith with the entire property at the fair market price at the time, and with the substantial acquiescence of the complainants, and applied the proceeds in pursuance of their pledge, in part payment of the cash advances previously made by them upon faith of it, leaving a balance still due to them, responsible for an indefinite future period, for fluctuations which might take place in the market price of the securities in question to the complainants, who had no capital whatever invested and nothing at risk.

Ninth Point.—And irrespective of all the special circumstances of this case before adverted to, if, under such a pledge as this, the property had been disposed of with irregularity, and not in pursuance of the strict rights of the parties, so that there had been technically a conversion, but yet the disposal had been in good faith, and the proceeds had been applied upon account of the debt for which the pledge was held, the pledgor could not have been permitted to recover the highest price up to the time of the trial, or the price at time of suit brought, but would have been limited to damages fixed according to the value or market price at the time of the conversion, with interest.

The general rule is well settled, that, in case of default by the vendor in performance of an executory contract for sale of chattels, the damages recoverable by the vendee for non-delivery, are, the difference between the contract price and the market price at the time and place fixed for delivery (with perhaps an extension of some short time requisite to enable the vendee to supply himself with the article by purchasing it in the market from some other vendor), and that a subsequent rise in market price of the article is not to be taken into account in fixing the damages. But the distinction has been made in some cases, and apparently with good reason, that, though this is the proper rule, in the ordinary case where the vendee is, by the contract, to pay the price at or after the delivery, so that upon the failure to deliver he has the money in his hands wherewith to purchase the article in the general market, the rule does not apply where the vendee has paid the price in advance, and that in such case damages may be recovered upon the basis of a subsequent rise in price.

In the discussions of, and adjudications upon, the question whether, in case of conversion of chattels, of such character as gave ground for the old action of trover, the damages should be fixed by the value at the time of the conversion with interest, or be enlarged in case of and according to subsequent rise in price or value before trial, there has

been, as is well and familiarly known, great contrariety of opinion and decision.

Where the question arises in relation to property held under a pledge, of which, by reason of irregularity in sale there has been technically a conversion, but without bad faith, we think it may now be regarded as the rule settled by the best authorities, and it is certainly the one most consonant with reason and justice, that the analogy of the above-mentioned rule in relation to the damages recoverable for non-delivery under an executory contract of sale, with the distinction upon the point whether the price has or has not been paid in advance, shall be applied; and that in such case, though the sale may have been made with such irregularity as to be a conversion and technically tortious, if the pledgee has in effect, by means of the advance or debt for which he holds the pledge, supplied the fund for acquisition or holding of the property converted, so that the pledgor has no capital invested in it, and, therefore, in case of an irregular sale for a debt actually due, has, presumptively, in his own hands the funds wherewith to replace the article by purchase in market, so as to continue the speculation upon the future market price if he desires to do so (provided he has any capital entitling him to conduct such speculation at all), the damages recoverable by the pledgor against the pledgee making the irregular sale, shall be limited by the market price at the time of such sale (with merely such extension as might be requisite to afford time for the purchase in replacement if desired), and that damages upon the basis of a future rise in price shall not be in such a case recoverable.

The application of such a rule to the circumstances of this case would preclude any recovery by the complainants, and leave a considerable balance of the indebtedness still due to the defendants.

See Baker v. *Drake*, 53 *New York R.* 211.
Suydam v. *Jenkins*, 3 *Sandford, N. Y., Superior Ct. R.*, 614.
Shepherd v. *Hampton*, 3 *Wheaton*, 200–204.
Ormsby v. *Copper Mining Co.*, 56 *N. Y., pp.* 623–5.

Baker v. *Drake*, 66 *N. Y.*, 518.
Prince v. *Connor*, 69 *N. Y.*, 608.
Groonan v. *Smith*, 81 *N. Y.*, 625.
Colt v. *Owens*, 90 *N. Y.*, 368.

Tenth Point.—It appears to be the clearly settled law of Louisiana, that in case of sales made in good faith, as unquestionably those here in question were, if such sales be adjudged to be irregular or unauthorized, so as to be technically wrongful, there can be no recovery of damages estimated upon the basis of a subsequent rise in price, but the damages are limited to the price or value at the time of sale, with interest.

And as the only basis upon which the plaintiffs, after the credit in account for proceeds accepted by the compromise agreement, can possibly make claim, is the clause of reservation contained in the order of March 3-9, such reservation *made by order of a Court of the State of Louisiana*, if treated as effectual and still operative, must be regarded as made with reference to such settled rule of the Louisiana law, and construed accordingly, so that any claim for damages under it must be subject to the limitations imposed by such rule.

Badillo v. *Tio*, 7 *La. Ann. R.*, 487.
Waterhouse v. *Bourke*, 14 *La. Ann. R.*, 358, 361.
Chamberlain v. *Werrell*, 38 *La. Ann. R.*, 347.
Vance v. *Touen*, 13 *La.*, 225.

Eleventh Point.—The only reservation which even purports to be made by the order of March 3-9, is of a claim for damages for a sale or sales alleged to be wrongful, and any such claim is barred by the Louisiana Satute of Limitations in such case applicable, contained in § 3536

of the Revised Civil Code of Louisiana of 1870, which section is in the words following:

"§ 3536. The following actions are also prescribed by "one year.

"That for injurious words, whether verbal or written, "and that for *damages* caused by animals or *resulting* "*from offences or quasi offences.*

"That which a possessor may institute, to have himself "maintained or restored to his possession when he has "been disturbed or evicted.

"That for the delivery of merchandise or other effects "shipped on board any kind of vessels.

"That for the damages sustained by merchandise on "board ships, or which may have happened by ships run-"ning foul of each other."

This claim for damages resulting from an alleged wrongful sale or conversion, comes within the first above subdivision, concerning *damages resulting from offences or quasi offences.*

In Louisiana, having its jurisprudence based mainly upon the civil law and largely using French phraseology in its law terms, the word "offences" as here used in relation to *civil actions*, is equivalent to what in the common law are called "torts."

This defence of the statute of limitations is specially set up in the answer, *fol.* 53, *page* 18.

At all events, no damages for the alleged irregularity or wrong doing in respect of the sale in question can be recovered in this suit under the bill of complaint.

Twelfth Point.—The claim to avoid the sale of May, 1879, or claim damages because of it, is barred as *res judicata*, by the decree in the suit of Forstalls against the commissioners in the Fifth District Court of New Orleans, which is set up as such bar by the answer at *fol.* 49–50, *page* 17. The complaint or petition in this suit is at *fol.* 77 *to* 82, pages 30–31. The answer of the commissioners is

at *fol.* 85 *to* 90, *pages* 33 *to* 35. The final decree in that suit is at *fol.* 88-89, page 40. The admission of the authenticity of these documents as annexed to the answer is at *fol.* 325, pages 130-31.

From these documents it will be seen that by their complaint or petition in that suit the Forstalls alleged the sale of May, 1879, as legal and valid; that by their answer the commissioners wholly disputed the claim alleged by the Forstalls, and questioned the sale of May, 1879, and alleged its invalidity upon substantially the same grounds as they now allege in this suit, and asked for judgment in their favor in respect of the Forstalls' demand for the missing coupons, and for judgment in their favor against the Forstalls "rejecting their account" (wherein the proceeds of the bonds were credited on the basis of the sale of May, 1879), "and reserving to defendants, in their said capacity as commissioners, the right to sue hereafter for all losses, damage and injury by the bank sustained or the creditors thereof by the illegal and wrongful sale of the bonds pledged to said plaintiffs by the Mechanics' and Traders' Bank."

The judgment in that suit is in favor of the Forstalls for the demand sued for, and does not at all grant the defendant's prayer for rejecting the account, or reserving to them the right to sue for damages on account of the alleged wrongful sale, and their claims in that behalf, as made by their answer were thus, in legal effect, rejected and barred.

Thirteenth Point.—This suit, so far at least as respects any claim for return of the bonds, is likewise barred, as *res judicata*, by the decree of March 3-9, 1880, in the suit of the State of Louisiana *ex rel.* Wogan *v.* The Mechanics' and Traders' Bank, which is set up as such bar in the answer at fol. 51-52, *pages* 17 *and* 18, inasmuch as that decree expressly *established the account* in which the proceeds of the sale of May, 1879, were

credited to the bank by the Barings, which credit is wholly inconsistent with there being any claim for the subsequent restoration of the bonds themselves by the Barings to the bank or its representatives.

Fourteenth Point.—If the reservation of the order or decree of March 3-9 was effectual and operative up to the time of or immediately preceding the sales of May, 1879, such reservation was waived and relinquished by the commissioners at that time, and by their conduct on that occasion as shown by the evidence before adverted to.

Fifteenth Point.—The claim of the appellants is without a particle of intrinsic justice, or moral or legal equity.

The bonds were given and received in pledge at the valuation of forty per cent. for the consolidated bonds, and thirty per cent. for the premium bonds, which were fixed by the bank itself, and were the full and utmost values at the time, and they subsequently declined in value and price.

It is indisputable, that at the time of the failure of the bank, and at all times thereafter up to the time when the bonds were sold and actually parted with by the Barings, the debt for which the bonds were held in pledge, with present power of sale at pleasure, largely exceeded their utmost value, so that the equity of redemption of the bank or its representatives, was merely nominal and of no value, and that the bank was utterly insolvent, and there was no possibility of redeeming the bonds, nor any idea of doing so, nor any possibility of the bank or its representatives realizing from them, by any means, any surplus whatever beyond the debt for which they were pledged, or by any management of them making them adequate to satisfying the whole debt for which they were pledged.

It is equally indisputable, that the conduct of the pledgees throughout was absolutely fair, just and honorable, and there was not even the slightest degree of harshness on their part in the exercise of their legal rights as pledgees, and that pursuing such course, they in good faith sold the whole of the pledged securities for the full value and utmost possible price, after applying which there was left a considerable balance of their debt, as a dead loss to them; and that while this was being done, the representatives of the bank stood by, and (to say the least) did not make or intimate any objection to the actual sales which were being or about to be made.

It is equally clear that the formal notice of the actual sales, the lack of which is now alleged as the legal ground for disregarding the actual sales, and holding the Barings liable for the subsequent large advance in price and value of these pledged and sold securities, was, under the actual circumstances, a mere formality, as barren, and free from possibility of benefit to the pledgors or their representatives, as could well be imagined; that if the formal notice had been given, the actual result to the pledgors, in respect of the disposition of the securities and the amount of net proceeds would not have been varied by a hair's breadth. And it is purely by reason of the omission of this barren formality, that it is now attempted to subject these pledgees to an actual loss of two hundred thousand dollars, by holding them responsible for an advance, at a long subsequent period, of the market price of the securities to twice and a half the amount of their value at the time of their actual sale under the pledge in the most perfect good faith, and under the circumstances above set forth.

If any such claim of damages were sustained it is very clear that they would not be in the slightest degree *compensatory damages* for any injury sustained. On the contrary, to allow such a claim would be a mere mulct upon one party for what was at the most an innocent mistake, which had not caused any actual loss whatever, and a pure *boon and gratuity* to the other party having no just right to it.

If it were possible to allow the complainants, after the making of those actual sales by the Barings, under the

circumstances under which they were made, to question those sales, and still make further claim in respect of the bonds or their value, by reason of the lack of formality of notice, the complainants were, at the least, bound to make such further claim with due diligence.

They could not lawfully (as they did) lie by, and forbear to make such additional claim until after long delay, and an entire change of circumstances; and under such circumstances their *laches* in the assertion of such claim (unconscionable as it is), form a good equitable bar against it (irrespective of bar by positive statutory limitation), and this equitable bar is specially set up in the answer.

Sixteenth Point.—The decree appealed from is in entire consonance, as well with legal principles, as with equity and good conscience, and it should be affirmed, with costs.

JOSEPH H. CHOATE,
Of Counsel for Appellees.

123-562

IN THE

Supreme Court of the United States.

No. 69.—October Term, 1887.

LEOPOLD LACOMBE, AND OTHERS, COMMISSIONERS OF THE MECHANICS' AND TRADERS' BANK, APPELLANTS,

vs.

EDMUND J. FORSTALL'S SONS, AS AGENTS OF BARING BROS. & CO., ET AL.

Motion for a Rehearing.

Come now the appellants by their counsel, and move the Court that they may be heard again upon the single point that their account with the appellees should be adjusted upon the basis of the actual sales of May and June, 1880, to strangers.

In support of this motion, the appellants most respectfully submit the following observations:

I. The Court grounds its affirmance of the decree below, dismissing the bill, on the indorsement of the pledged bonds by the appellants in May, 1880, and the actual sales of the bonds in that and the following month by the appellees to strangers. On this point the Court says:

"We are of opinion that the action of the present complainants in indorsing these bonds as payable to bearer, and delivering them in that condition to Forstall's Sons,

with the knowledge that they had been or were to be sold again by that firm, and for the purpose of enabling them to transfer them with a good title, must be considered a waiver of any right to sue on account of the first sale. *This indorsement and the subsequent sale by Forstall's Sons* were, in fact, A WAIVER ON BOTH SIDES OF THE PREVIOUS SALE, and of any rights accruing under it, as well as A CONSENT BY BOTH PARTIES *to the second sale.*"

II. The Court seems to have thought that the accounts between the parties were settled on the basis of the sales of May and June, 1880, and that the difference between the proceeds of those sales and the amount credited to the complainants under the simulated sale of May 22, 1879, was so slight as not to be worth litigation. On these points the Court observes:

"If the right to sell these bonds for the debt due to Baring Bros. & Co. at that time (May and June, 1880,) be conceded, as we think it must be, then no just complaint can be made of the sales, or of the proceedings attending them. A full report of those sales, with the amounts received, and a statement of the account AS THUS ADJUSTED is set out by the answer as an exhibit. * * *

It is obvious, as the testimony clearly shows, that the bonds were worth but little more in a fair market at the time this indorsement was made than when they were first sold by Forstall's Sons, and that there was no right of action at law by which any sum could have been recovered worth the litigation.

It is, therefore, easy to conceive that when these commissioners of the bank in liquidation asked of the Court, in which that liquidation was pending, for power to indorse these bonds and deliver them to Forstall's Sons for sale, that they were doing the wisest thing that could be done at that time for the creditors of the bank, for, by such sale, *the bank would get the benefit of all that the pledged securities were worth* THEN *in the market.*"

III. But this result has never been reached, for in their account with the defendants the complainants were not

credited with the proceeds of *these* sales, but only with the proceeds of the pretended sale, at which the defendants themselves were the purchasers, about a year earlier. Under the pretended sale, the defendants credited the complainants with $101,837.50; but, by the sales of the same bonds to strangers in May and June, 1880, the sum realized was $123,584, making a difference of $21,746.50 in favor of the complainants. These figures are given in the briefs on both sides (appellants' brief, p. 13; appellees' brief, p. 6). The appellees' brief reduces the difference from $21,746.50 to $15,636.25, as follows:

"But if the two sales are to be compared for the purpose of crediting in the account the excess of the one over the other, allowance must of course be made for the interest on the amount of the earlier credit up to the time of the later sales to strangers, inasmuch as the city was in default, paying no current interest, and the later sale included all the accrued interest in arrears. This period, from May 22, 1879, to the time of the actual sale to strangers, was a little over one year, but we will call the allowance for it one year's interest at six per cent. on $101,837.50, being $6,110.25, deducting which amount from the before-stated sum of $21,746.50, leaves $15,636.25 as the actual excess of the second sale over the first."

IV. It follows, therefore, that the Baring Bros., as against the other creditors of the bank, have drawn dividends (one of twenty and one of ten per cent.) upon a sum greater by $15,636.25 than the true balance in their favor. This excess of dividends, amounting to $4,690.87, should be refunded to the Commissioners of the insolvent Mechanics' and Traders' Bank, with interest from the dates of payment, for distribution *pro rata* among all the creditors; and any further dividend to the Barings should be made upon the sum of $33,697.09, instead of $49,333.34.

V. It was anticipated by both sides that the Court might

decide (as in so many words it has decided) that the sales to strangers in May and June, 1880, furnished the basis for the adjustment of the accounts between the parties. On this point the learned counsel for the appellee remarked in his brief as follows:

"We may observe, that in such a case of sale and repurchase, or nominal sale, held by a Court of equity to be inconclusive as against a dissenting pledgor, where *there had been a subsequent actual resale* by the pledgee (who had, in effect, bought in at the formal sale under the pledge) before any formal annulment of such nominal sale, a decree holding the pledgee accountable for the advance or profit obtained by him upon the resale, in addition to the price of the first sale, would substantially satisfy the requirements of the rules of equity law applicable to the subject."

This point was covered by the fifth assignment of error in the brief for the appellants (p. 22), which reads as follows:

"Even if the Court found that the sale of May 22, 1879, was a nullity, and that the relation of pledgor and pledgee continued unaffected thereby, and also found that the sales of May and June, 1880, were rightfully made in execution of the act of pledge, or that they were ratified by the complainants, or that the complainants were estopped from assailing them, then the Court erred in not rendering a decree in favor of the complainants for the excess of the proceeds of those sales over the amount credited on the 22d of May, 1879, by the defendants on their account with the complainants."

VI. The fact that the insolvent bank is still indebted to the appellees, is no reason for refusing to adjust the account between them and the Commissioners in their apacity of trustees for all the creditors, on the basis of the actual sales of May and June, 1880, when the court has decided that these sales and the indorsement of the bonds "were in fact a waiver on both sides of the previous sale, and of

any rights accruing under it, as well as a consent by both parties to the second sale." There has in fact been no such adjustment, for the appellees, in June, 1879, put in their claim against the insolvent bank for a balance which had been calculated on the basis of the pretended sale of May 22, 1879, and they drew the dividend of 20 per cent. on that excessive balance (as the subsequent actual sales proved it to be) under the agreement of August 25, 1879, on the 27th of that same month (fol. 206, p. 81). The subsequent dividend of 10 per cent. was drawn on the same basis (fol. 209, p. 83). It is therefore clear to a demonstration that an equal distribution of the assets by the Commissioners among the creditors of the insolvent bank cannot be made, nor can the Court give proper effect to its own decision, unless it is decreed that the appellees shall return the amount which they have drawn as dividends upon the excessive part of the balance in their favor. Both sides agree that this excess, or the difference between the proceeds of the pretended sale of May 22, 1879, and the actual sales of May and June, 1880, is $21,746.50 (appellees' brief, p. 6; appellants' brief, p. 13); but it is claimed by counsel for the appellees that they are entitled to interest for a year on the amount which they credited on their account with the bank as the proceeds of the "sale" of May 22, 1879, viz., $101,837.50, such interest amounting to $6,110.25, and reducing "the actual excess," on which the appellees have wrongfully been drawing dividends, to $15,636.25. Thirty per cent. of this amount, as against the other creditors of the insolvent bank, is held by the appellees, against equity.

VII. The Circuit Court of the United States had jurisdiction of this cause in equity because actual fraud on the part of the defendants as trustees was alleged in the bill, and there was a voluminous accounting involved between the parties (Record, pp. 138–143), and also between the

complainants, as Commissioners of an insolvent bank, and the creditors of that bank, some of whom were secured like the defendants, and others were without security, so that a marshaling of assets was necessary. (See Conyngham's appeal, 57 Pa. St., 474.)

We therefore move the Court to amend the decree affirming the dismissal of the bill, so that an accounting may be had between the parties on the basis of the prices obtained at the sales of May and June, 1880.

CRAMMOND KENNEDY,
W. S. PARKERSON,
Counsel for Appellants.

WASHINGTON, D. C., *December* 20, 1887.